INSTALLATION ACCESS CONTROL SYSTEM (IACS) AWARENESS

CHAPTER 7
Section A

AE Reg. 190-16 & 190-16G

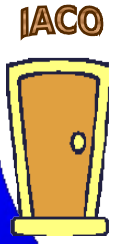
(German language version)

INSTALLATION ACCESS CONTROL (IAC)

Requires Requiring Activity (RA) to "Sponsor" contractors accessing U. S. installations.

CORs shall become familiar with the pertinent prevailing regulation, found at

http://www.hq.usacce.arm



INSTALLATION ACCESS CONTROL SYSTEM (IACS)

CORs need to know their local INSTALLATION ACCESS CONTROL OFFICE (IACO)

POCs, and location of local (BSB)

FIGURE 39

DEPARTMENT OF THE ARMY HEADQUARTERS, UNITED STATES ARMY, EUROPE, AND SEVENTH ARMY

UNIT 29351

APO AE 09014-9351

This memorandum is available at https://www.aeaim.hqusareur.army.mil/library/home.htm.

AEAPM-O-SO 26 September 2003

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Access-Control Point Standing Operating Procedures Template

1. This memorandum expires in 1 year.

a. AE Regulation 190-16, Installation Access Control, 5 December 2002.

b. Memorandum, HQ USAREUR/7A, AEAPM-O-SO, 2 January 2003, subject: Fielding of the Installation Access Control System.

c. Memorandum, HQ USAREUR/7A, AEAPM-O-SO, 30 June 2003, subject: Fielding of the Installation Access Control System - Phase 2.

2. The Office of the Provost Marshal (OPM), HQ USAREUR/7A, is continuing to field the

Installation Access Control System (IACS). Registration module fielding was completed in June 2003, the Gate module fielding will begin in late July or early August, and the Law-Enforcement module fielding will begin soon after that.

3. AE Regulation 190-16 was published on 5 December 2002, and an update to that regulation will be published in October to coincide with the end of the transition period. AE Regulation 190-16 prescribes policy, procedures, and guidance on the use and capabilities of the IACS. For the IACS initiative to be successful, area support group (ASG) commanders must ensure base support battalion (BSB) access-control point (ACP) standing operating procedures (SOPs:

a. Meet the requirements of AE Regulation 190-16.

b. Fully explain guard p ACS and manual systems.

FIGURE 39 (continued)

AEAPM-SO

SUBJECT: Access-Control Point Standing Operating Procedures Template 2

5. The POC is MAJ Sickinger, DSN 381-7661, e-mail: james.sickinger@manupo.pmo.army.mil.

FOR THE COMMANDER:

Encl MICHAEL L. DODSON

Lieutenant General, USA

Deputy Commanding General/

Chief of Staff

DISTRIBUTION:

B (AEPUBS)

Encl

Access-Control Point SOP Template Overview

1. This template is an example of access-control point (ACP) procedures. It is not intended to include everything that might be addressed in local SOPs. This template includes information only on personnel-access authorization (AE Reg 190-16 and the Installation Access Control System (IACS)); it does not cover other areas such as search lanes and overwatch procedures. This template is not a "fill-in-the-blank" type document. The template should be used only as a guide. Those responsible for installation-access control at base support battalions (BSBs) will have to do the detailed work required to publish a thorough ACP SOP.

2. OPM recommends that area support groups (ASGs) and BSBs integrate applicable portions of this template into their own guard SOPs. The template is based on AE Regulation 190-16. Applicable paragraphs of AE Regulation 190-16 are referenced in italics at the end of some paragraphs. This is to show the relationship between the SOP and AE Regulation 190-16. Paragraph references in the template are from the AE Regulation 190-16 that is currently being staffed.

3. The template is written as if the transition period is over and the only authorized access documents are DOD ID cards and IACS-produced installation passes. The transition period will end approximately 17 October 2003. An overview of the transition period is at *https://www.aeaim.hqusare[illegible]r/ul2003-018.htm* (go to tab 4).

FIGURE 39 (continued)

AEAPM-SO

SUBJECT: Access-Control Point Standing Operating Procedures Template 2

b. The IACS Users Manual has IACS operating instructions. They are not included in this template.

c. For the integration of IACS to be successful, two things are required:

(1) Leader involvement. IACS usage cannot be delegated to contract guards and then forgotten by the BSB proponent for installation access (usually the provost marshal office) and the BSB leadership. These groups must have a solid understanding of IACS to benefit from IACS.

(2) Consistent use. One of IACS's greatest selling points is that it provides the ability to maintain a permanent record of everyone entering the installation. The law-enforcement and military-intelligence benefits of this capability are enormous. This potential, however, will not be realized if IACS is used intermittently (for example, if guards scan the card of every third person instead of scanning every card). BSBs must develop tactics, techniques, and procedures to be able to fully integrate IACS into gate operations.

GUARD SOP TEMPLATE INDEX

Section I. **Overview**

Section II. **Authorized Access Methods *(para 8)***

Section III. **Access Procedures (Gates Without IACS)**

Section IV. **Access Procedures (Gates With IACS)**

Section V. **Access for Emergency and Protective-Service Vehicles *(para 40)***

Section VI. **Procedures for Handling Situations When Drivers Disregard Gate-Guard Instructions**

Section VII. **Authorized Exceptions *(required by para 5g(1)(d))***

Section VIII. **Confiscating ID Cards *(para 41a(4))***

Annex A. **Pictures [illegible]cuments *(required by para 5g(1) (d) 5)***

FIGURE 39 (continued)

Section I

OVERVIEW

1. Purpose. The primary purpose of gate guards is to grant access to persons authorized access according to AE Regulation 190-16 and to deny access to all others. AE Regulation 190-16 and this SOP explain access authorization for individuals, not vehicles. The decision to search a vehicle will be governed by other publications and authorities.

Section II

AUTHORIZED ACCESS METHODS

2. Access Documents. Access documents allow the holder recurring and unescorted access.

a. The only authorized access documents for U.S. Army-controlled installations are:

(1) DOD ID cards (including Common Access Cards (CACs)).

NOTE: Some foreign nationals may possess a CAC with a red vertical line down the right side; this particular CAC is not an authorized access document.

(2) The IACS-produced USAREUR/USAFE Installation Pass and Temporary USAREUR/USAFE Installation Pass.

b. Annex A has pictures of sample access documents.

3. Access Rosters. Allow those on the roster unescorted access.

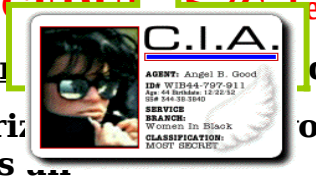
4. Sign-in. Allow those with sign-in privileges (the sponsor) the ability to sign-in others. Sponsors must monitor the conduct of individuals they sign in and are responsible for their conduct. *(para 38)*

5. Emergency and Protective-Service Vehicles. Section V explains facilities access for emergency and protective-service vehicles.

6. Exceptions. Section VII explains access procedures for situations not specifically authorized by AE Regulation 190-16.

Section III

ACCESS PROCEDU[illegible]S (Gates Without IACS)



7. Checking Access Docu[illegible]ds will—

a. Verify access authori[illegible]one entering the installation. This includes [illegible] passengers in every vehicle, not just the driver *[required by para 41c(2)]*.

b. Physically check both the front and back of the access document for signs of alteration or unservicability. Unservicability is defined in AE Regulation 190-16 as "any condition or change to the card or pass that impairs the guard's ability to verify that the card or pass holder is the individual on the card or pass, or causes the guard to question whether or not the card has been altered. Unserviceable does not include minor bends, peeled lamination, print fading, or other deficiencies that do not impair the guard's ability to verify that the card or pass holder is the individual indicated."

c. Compare the photograph of the person on the access document with the person presenting the access document to ensure they match.

d. Always check the expiration date of the access document to ensure it has not expired.

e. On installation passes, check for limitations that would prohibit access. A quick scan of the installation pass will reveal whether or not access is authorized for a given installation, on a given day, at a given time, and at a given force-protectioncondition (FPCON).

f. Check a second form of identification and a vehicle registration when required by local policy (for example, thoroughly checking personnel and vehicles during a specific FPCON or random antiterrorism measure). *(para 41b)*

8. <u>Access Roster</u>. The following are procedures for verifying access authorization for individuals on an access roster:

a. If an individual informs a gate guard that he or she is on an access roster, the guard will obtain from the individual a passport or other personal identity card. *(para 39f(1))*

b. Compare the photograph on the document with the individual and ensure they match.

c. If the person is in a vehicle, ask the person to pull over to a designated area.

d. Check valid access rosters on file in the guardhouse. *(Note: BSBs need to establish criteria for identifying a BSB-approved access roster; for example, a specific stamp or signature.)*

e. Check the access roster for the person who provided the document. The name and document number must match. *(para 39f(1))*

f. Grant access only wh paragraphs b and e above have been verified.

FIGURE 39 (continued)

TABLE 1

Results of Scanning DOD ID Cards and Installation Passes Message Meaning Procedures (what the guard should do)

PASS-ACCESS AUTHORIZED: The person is registered in the IACS database and cleared for access. Grant access.

STOP-ID CARD REPORTED

LOST OR STOLEN: The scanned card was reported lost or stolen. Do not grant access. Instruct the person to pull over to a designated area, and contact the MPs. Proceed with caution- although there may be a plausible explanation, it's conceivable that someone stole or found an ID card and is trying to use it to gain access.

STOP-ACCESS DENIED TO THIS INSTALLATION: The person has an active IACS record but is not allowed access to this installation. Deny access.

STOP-ACCESS DENIED AT THIS FPCON: The person has an active IACS record, but is not allowed access at the current FPCON. Deny access.

STOP-ACCESS NOT AUTHORIZED AT THIS TIME: The person has an active IACS record, but is not allowed access at this hour of the day. Deny access.

STOP-ACCESS NOT AUTHORIZED ON THIS DAY: The person has an active IACS record, but is not allowed access at this day of the week. Deny access.

STOP-CALL LAW ENFORCEMENT: The card scanned has been flagged in the IACS database as "Call Law Enforcement". Ask the person to pull over. Contact MPs and ask them to locate the person's record in the IACS Law Enforcement module and review the reason for the flag. Take appropriate action based on that information.

STOP-BARRED: The person's record has been flagged as "Barred" in the IACS database. Maintain control of the card; ask [illegible] pull over and call MPs to the scene.

FIGURE 39 (continued)

TABLE 1 (continued)

STOP-INVALID ID CARD: The security code on the ID card does not correspond to the record in the IACS database. Conduct a manual look-up on the laptop in the guardhouse to determine if the person is authorized access. Grant access if authorized and advise the person to contact the servicing IACO to get the barcode discrepancy resolved. Deny access if the results of the manual look-up, do not indicate access is authorized.

STOP-UNABLE TO DECODE ID CARD: The scanner could not read the barcode 39 on the ID card. The card may be worn or damaged. Conduct a manual look-up on the laptop in the guardhouse to determine if the person is authorized access.

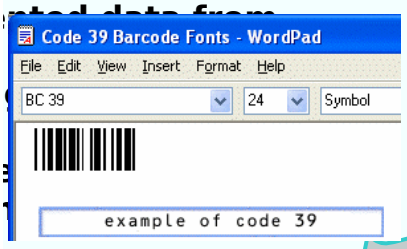
STOP-RECORD ARCHIVED: The record for this ID card holder was archived. Deny access

STOP-MULTIPLE RECORDS FOUND: There are multiple records in the IACS database that are linked to this ID card. Conduct a manual look-up on the laptop in the guardhouse to determine if the person is authorized access.

ERROR-SERVER ERROR: The software detected an error in the data returned to the scanner. Rescan the ID card. If the scanning process still doesn't work, conduct a manual look-up on the laptop in the guardhouse to determine if the person is authorized access. Contact IACS System Manager if the problem

t to manual procedures.

ERROR-NO DATA F



access. Contact IA Mana temporarily revert to manual process.

FIGURE 39 (continued)

c. Checking other documents (for example, a second form of ID or vehicle registration) should never be done if the individual is registered in the IACS and access is authorized. *(para 41c)*

11. Procedures for verifying access authorization for individuals on an access roster.

a. If an individual informs a gate guard that he or she is on an access roster, the guard will obtain from the individual either a passport or personal ID card. *(para 39f(1))*

b. Guards will compare the photograph on the document with the individual and ensure they match.

c. If the person is in a vehicle, ask him or her to pull over to a designated area.

d. Log on the IACS laptop in the guardhouse and select the Access Roster tab on the main switchboard.

e. Search the access roster for the person. The name and document number must match. *(required by para 39f(1))*

f. Grant access only after items in subparagraphs b and e above have been verified.

12. Procedures for verifying access authorization for individuals being signed in.

a. Obtain from the person being signed in either a passport or personal ID card; this document must have a photograph. The guard will verify that the person being signed in matches the photograph on the document. Guards also will obtain the sponsor's DOD ID card or Installation Pass.

b. Log on to the IACS laptop in the guardhouse.

c. Scan the sponsor's DOD ID card or Installation Pass.

d. Type in the required information in the Sign-In module and save the record.

13. Procedures for logging in non-registered DOD ID-card holders. The following procedures will be used when the results of a DOD ID-card scan read "Stop - Not Registered":

a. Compare the photograph on the document with the individual and ensure they match.

b. Check at least the expiration date of the access document to ensure it has not expired.

c. If the person is in a vehicle, ask him or her to pull over to a designated area.

FIGURE 39
(continued)

14. Procedures for when IACS is temporarily inoperable.

a. Guards will immediately revert to manual procedures (section III of this SOP) for checking access documents, signing in visitors, and checking access rosters, when IACS operability is disrupted. This means that gates fielded with IACS must, at least for the foreseeable future, retain the ability to quickly and completely revert to manual procedures.

b. *(State here whom the guard should contact to report IACS inoperability.)*

Section V

Access for Emergency and Protective-Service Vehicles

15. (ASGs and BSBs will use the guidance in AE Reg 190-16 or modify it to suit their needs.)

Section VI

Procedures for Handling Situations When Drivers Disregard Gate-Guard Instructions

16. (ASGs and BSBs will develop this paragraph based on local conditions. For example, ACPs with active barrier systems would have unique procedures.)

Section VII

Authorized Exceptions

17. (Outline ASG-approved exceptions here.)

Section VIII

Confiscating ID Cards

18. (Outline local procedures for confiscating ID cards. Note that these procedures must be consistent with AE Regulation 190-16, paragraph 41a(4). Most importantly, guards will not confiscate ID cards for trivial reasons. Strict adherence should be given to confiscating unserviceable ID cards using the definition in AE Regulation 190-16, which is:

a. "Any condition or change to the card or pass that impairs the guard's ability to verify that the card or pass holder is the individual on the card or pass, or causes the guard to question whether has been altered. Unserviceable does r bends, peeled

FIGURE 39
(continued)

ANNEXES

Annex A: Pictures of Sample Access Documents

Annex B Contact Roster (Chain of Command)

Annex C Map of Installation

Annex D Key Organizations on the Installation

Annex E Random Antiterrorism Measures Guidance

Annex F Use-of-Force Guidance

FIGURE 39
(continued)

STANDARDS of OFFICIAL CONDUCT

THE WHITE HOUSE

WASHINGTON

January 20, 2001

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Standards of Official Conduct

Everyone who enters into public service for the United States has a duty to the American people to maintain the highest standards of integrity in Government. I ask you to ensure that all personnel within your departments and agencies are familiar with, and faithfully observe, applicable ethics laws and regulations, including the following general principles from the Standards of Ethical Conduct for Employees of the Executive Branch:

(1) Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws, and ethical principles above private gain.

(2) Employees shall not hold financial interests that conflict with the conscientious performance of duty.

(3) Employees shall not engage in financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest.

(4) An employee shall not, except as permitted by applicable law or regulation, solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.

(5) Employees shall put forth honest effort in the performance of their duties.

(6) Employees shall not knowingly make unauthorized commitments or promises of any kind purporting to bind the Government.

(7) Employees shall not use public office for private gain.

(8) Employees shall act impartially and not give preferential treatment to any private organization or individual.

(9) Employees shall protect and conserve Federal property and shall not use it for other than authorized activities.

(10) Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official Government duties and responsibilities.

(11) Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.

(12) Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those -- such as Federal, State, or local taxes -- that are imposed by law.

(13) Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or handicap.

(14) Employees shall endeavor to avoid any actions creating the appearance that they are violating applicable law or the ethical standards in applicable regulations.

Executive branch employees should also be fully aware that their post-employment activities with respect to lobbying and other forms of representation will be bound by the restrictions of 18 U.S.C. 207.

Please thank the personnel of your departments and agencies for their commitment to maintain the highest standards of integrity in Government as we serve the American people.

FIGURE 40

ETHICS, STANDARDS OF CONDUCT and PROCUREMENT INTEGRITY

CHAPTER 7
Section B

1. LEARNING OBJECTIVES

Students will become familiar with the general principles of ethics and standards of conduct. Students must be able to recognize potential violations by contractors and how to avoid situations that may raise questions on propriety. Students must demonstrate their knowledge of the subject by deciding assigned case studies in interactive groups.

2. INTRODUCTION

a. In order to maintain the public confidence in the federal acquisition process, it is necessary that the U. S. Government and contractor employees follow exemplary standards of conduct. There are numerous statutory and regulatory provisions providing guidance on the standards which are expected to be followed and prescribing stringent penalties for noncompliance.

b. Transactions relating to the expenditure of public funds require the highest degree of public The purpose of this chapter is to establish policy an will help identify and prevent improper busin assist the government in pursuing criminal, civil, and/or administrative remedies, as appro on to investigating specific conce suspected misconduct, the U. S. Government pe reviews of the contractor's ethics prograr puts of this process are:

(1) Fraud Awareness and Integrity Training
(2) Remedial contract actions
(3) Recommendations for suspension/debarment
(4) Debriefing to the initiator
(5) Ethics Program Review Report
(6) Criminal indictments and convictions
(7) Civil settlement agreements/Civil litigation

3. GENERAL GUIDANCE AND POLICY

a. The U. S. Government ethics laws, regulations policies and rules are found in many sources. The primary source is the Joint Ethics Regulations (JER). In addition, United States Code (statutes or laws) makes some violations criminal acts. U.S. criminal statutes, however1,2

The Rules Matter

Support Public's Confidence In The Integrity Of Government.
There is the Possibility of Administrative, Civil and Criminal Penalties.

FIGURE 41

b. It's important to the public and you personally that you (as a U. S. Government employee) understand and follow the rules discussed in this chapter. When you follow the ethics principles, guidance, and Standards of Conduct, you support the public's confidence in the integrity of Government. You avoid administrative, civil, or possibly even criminal penalties.

c. If you ever have a question regarding how any of the restrictions applies to your particular situation, please contact your ethics counselor in advance of taking further actions. It is much easier for you to get advice ahead of time, than it is to try to undo the damage after a infraction, breach or violation has occurred.

d. All contract administration personnel including CORs must ensure that taxpayers' money, as well as Program Managers' funding is spent appropriately and in accordance with all applicable laws and contract requirements. Improper business practices may result in increased costs to the U. S. Government, and often present safety hazards for government personnel.

e. The U. S. Government contract administration teams play an important role in the prevention, detection, and reporting of improper business practices. This is especially true where a government employee is a frequent visitor to or has a duty station in a contractor's facility. Fraud Counsel conduct reviews of contractor ethics programs at the request of a customer or other government official or as part of a planned Performance Assessment Review or risk assessment to ascertain if a contractor's ethics program is adequate.

f. Whenever a government employee detects or suspects improper business practices, such as: false certifications, cost mischarging, defective pricing, kickback schemes, other fraudulent or criminal activity, or related irregularities (or becomes aware of any criminal investigation), the information shall be reported to the Fraud Counsel.

g. As warranted by the specific case facts, U. S. Government employees shall inform the Contracting Officer, supervisors and/or defense criminal investigative agencies of any/all irregularities detected. When an issue may have significant impact on a buying command's programs, report to Fraud Counsel shall include a request that the buying command(s) be informed.

5. BACKGROUND

a. In August 1992, the Office of Government Ethics (OGE) issued the Standards of Ethical Conduct for Executive Branch Employees. Built on 14 basic principles, the standards set forth rules regarding gifts between employees and the acceptance of gifts from sources outside the executive branch agency, conflicting financial interests, impartiality in performing official duties, seeking other employment, misuse of position, and engaging in outside activities.

b. DoD issued the Joint Ethics Regulation (JER), applicable throughout DoD, effective September 30, 1993. The JER supplements the Standards of Ethical Conduct for DoD.

c. The General Counsel is the Designated Agency Ethics Official (DAEO), appointed by the Secretary of the Army to administer the Army's ethics programs. The alternate DAEO is the Deputy General Counsel (Ethics & Fiscal).

d. Deputy DAEOs include the Judge Advocate General and the Chief of the Army Standards of Conduct Office (DA SOCO).

3. RESPONSIBILITIES

a. The General Counsel is the chief lawyer of the Army ultimately responsible for determining the Army's position on any legal question. The General Counsel serves as legal counsel to the Secretary, Under Secretary, five Assistant Secretaries, and other members of the Army Secretariat. The General Counsel also exercises technical supervision over the Office of the Judge Advocate General, the Office of the Command Counsel, Army Materiel Command, and the Office of the Chief Counsel, Corps of Engineers.

b. The Deputy General Counsel (Acquisition) assists and acts for the General Counsel with respect to those legal responsibilities concerning all programs, policies and issues affecting the acquisition and logistics responsibilities of the Department of the Army. Assisted by an office of six attorneys, the Deputy General Counsel (Acquisition) provides advice and assistance on acquisition law issues to all Army Secretariat officials, the Deputy Under Secretary of the Army (International Affairs), and the Small and Disadvantaged Business Advisor. These services cross a number of functional areas, such as Government acquisition and contract law, non-appropriated fund contracting, major weapons systems, research and development, testing, international acquisition, security assistance, government property, NATO

d. U. S. Army, Europe (USAREUR) ASG JAGs and the U. S. Army Contracting Office, Europe (USACCE) JAGs are responsible for collecting and filing the financial disclosure reports (SF 278s and OGE 450s) for Their own personnel, the presidential appointed-Senate confirmed officials (PAS officials: Secretary, Under Secretary, the Assistant Secretaries and the Genera Counsel), the Principal Deputies to the Assistant Secretaries of the Army, The Judge Advocate General, The Auditor General, and the Administrative Assistant to the Secretary of the Army. CORs are classified as "Procurement Officials", ans as such, are required to file. CORs should file with their ASG or Command JAG.

e. USAREUR Jags and USACCE are responsible for the annual ethics training for the officials for which it collects financial disclosure reports.

f. USACCE is responsible for providing legal advice in the area of ethics to the officials for which it collects financial disclosure reports. This includes but is not limited to post-employment counseling.

g. USACCE has oversight responsibilities over the Army ethics program, and accompanies DA SOCO to pre-OGE audit visits plus other assistance visits. USACCE also participates in the DoD senior ethics attorneys meetings, and participate the planning and execution of the DoD-wide basic ethics training at TJAGSA.

h. USACCE reviews the annual ethics report compiled by DA SOCO, as well as all Army-wide policy guidance documents. USACCE also transmit reports, requests for opinions or exceptions, and copies of documents from DA SOCO to OGE, and from OGE to DA SOCO.

i. DoD SOCO has responsibility for processing nomination packages for Civilian political appointees, but coordinates any necessary ethics agreements with USACCE. USACCE is responsiblefor processing 3 and 4 star general officer nomination packages.

4. CALENDAR.

a. February 1: Annual agency ethics report is due to OGE. DA SOCO complies from subordinate sites and sends to USACCE for review and forwarding to OGE.

b. Early April: DoD-wide Basic Ethics Class at TJAGSA. Preparations start the preceding December or January.

c. May 15: All annual SF 278s are due to USACCE, unless a prior written extension of time to file has been obtained. DA SOCO will start notifying officials of the requirement to

FIGURE 42

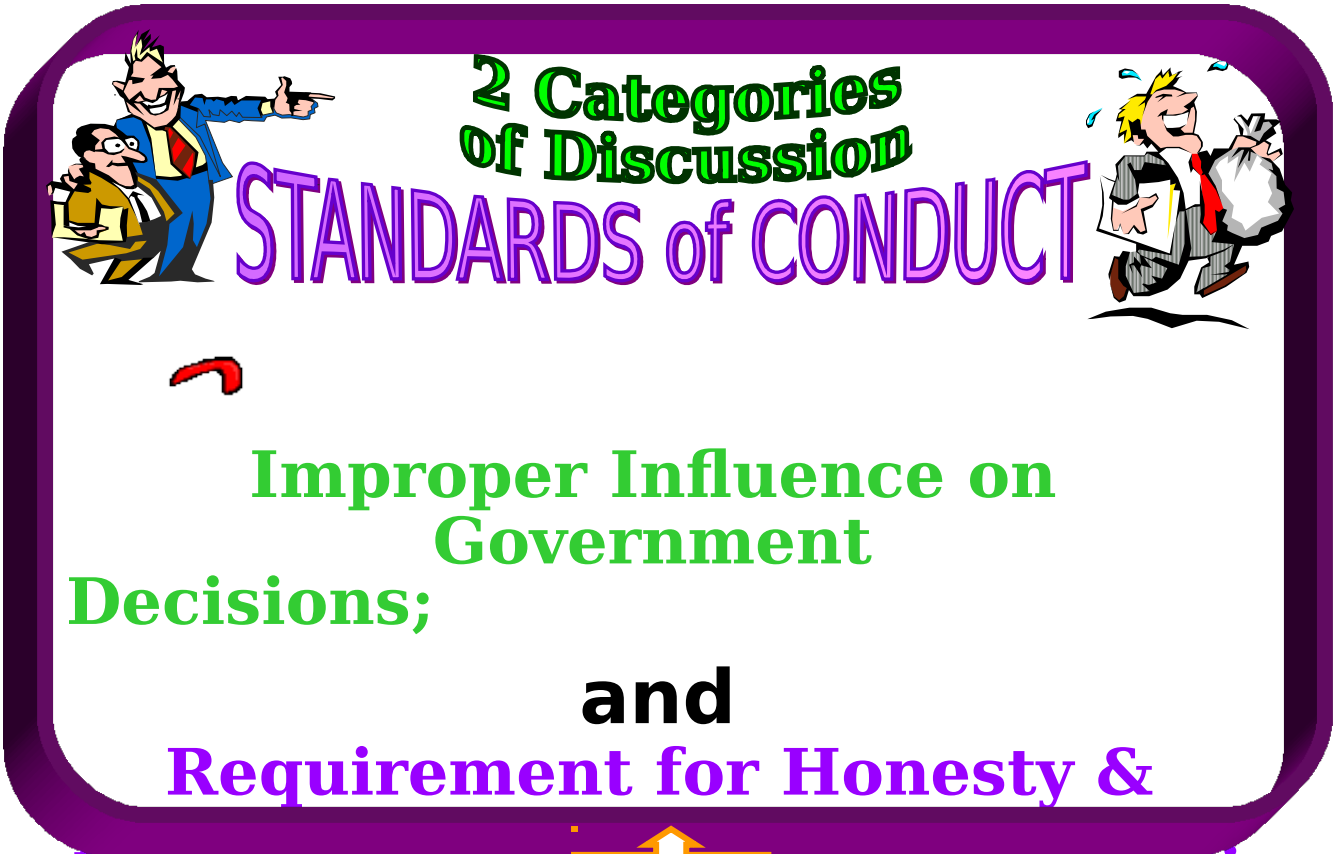


FIGURE 43

5. CONFLICTS OF INTEREST

a. Under Federal criminal law, Army officers or employees (and enlisted soldiers by regulation) may not participate in official matters that affect their outside financial interests, such as:

(1) A company in which the employee or his or her spouse or minor children own stock;

(2) Spousal employment, if the spouse is employed in a position which may be affected by an official Federal program or acted upon by the Federal employee;

(3) An organization which the Army employee serves as officer, director or employee in an outside or personal capacity;

(4) A company or organization with which the employee is seeking employment;

(5) [illegible]

b. Appearances of Conflicts

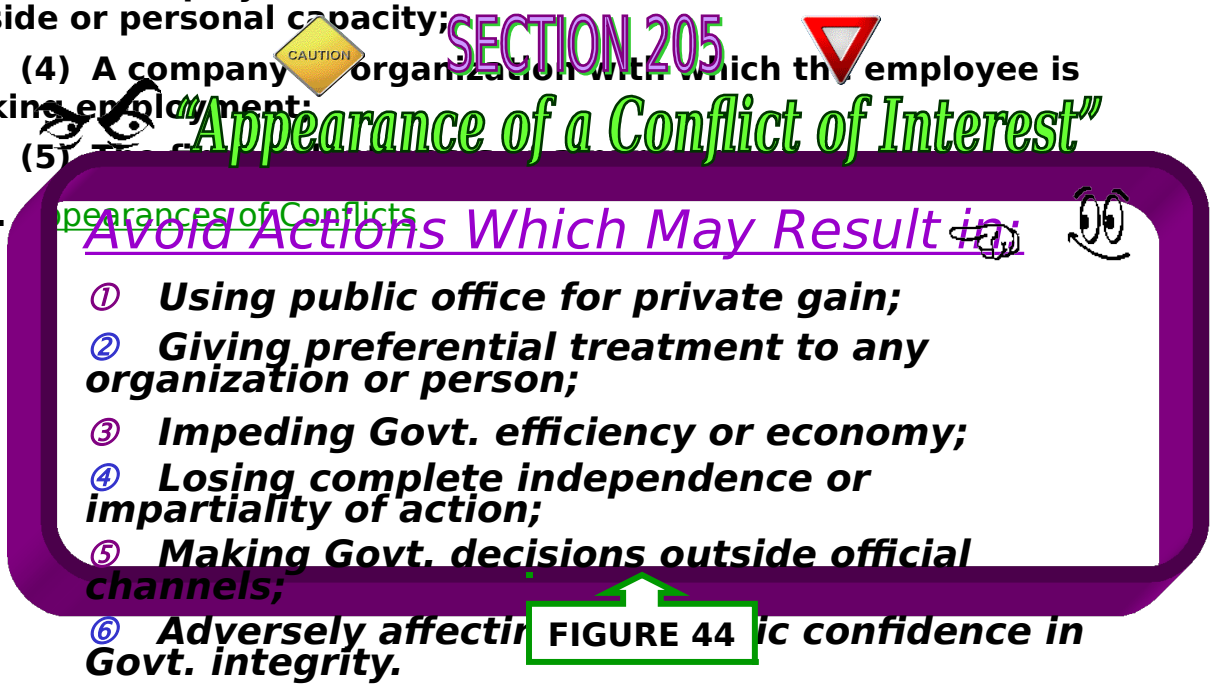

SECTION 205
"Appearance of a Conflict of Interest"
Avoid Actions Which May Result in:
① Using public office for private gain;
② Giving preferential treatment to any organization or person;
③ Impeding Govt. efficiency or economy;
④ Losing complete independence or impartiality of action;
⑤ Making Govt. decisions outside official channels;
⑥ Adversely affecting public confidence in Govt. integrity.

FIGURE 44

By punitive (penalty) regulation, employees may not participate in official matters when someone with knowledge of the relevant facts would reasonably question their impartiality. An employee could have an appearance of a conflict of interest when:

(1) The official matter is likely to affect the financial interests of a member of the employee's household, *e.g.*, grandparent, parents-in-law, or "significant other".

(2) Someone with whom the employee has a "covered relationship" is a party to the official matter, or represents a party to that matter. Examples of "covered relationships" are:

(a) A person with whom the employee has some sort of business or financial

6. RESTRICTIONS ON CONTACT WITH DEFENSE CONTRACTORS

a. Gifts

An employee shall not solicit or accept a gift:

(1) From a prohibited source (DoD contractor is a prohibited source); or

(2) Given because of the employee's official position.

(3) The test for "official position" is whether the gift would have been solicited, offered, or given had the employee not held his position as a Federal employee.

b. Exception

Gifts of a market value of $20 or less, not to exceed $50 in a calendar year from any one source.

c. Use of Non-Public Information

(1) Avoid unauthorized disclosure of information "not made available to the general public"

(2) In the alternative, use a Freedom of Inform (FOIA) standard. A osing information rized to be made available to a re est

(3) Other bases for nondisclosure include the Privacy Act, Tr e S rets, and classified materia

SECTION 205

Shall Not

Directly or Indirectly Use

OFFICIAL INFORMATION

Not Made Available to the General Public,

for Furtherin Interest.

FIGURE 45

d. Procurement Integrity

(1) Before the award of a government contract, a government official will not:

(a) Discuss employment with a competing contractor.

(2) What is a "gratuity or other thing of value"?

(a) Gift, favor, entertainment, or other item having monetary value.

(b) Given directly or indirectly.

(c) Does <u>not</u> include:

(i) Plaques or certificates with no intrinsic value.

(ii) Any unsolicited item, other than money, valued $20 or less.

(3) What is "contractor bid information?"

(a) Information contained in a bid, or proposal on cost, labor rates or proprietary information.

(b) Clearly marked as such.

(4) What is "source selection information?"

(a) Information for a procurement.

(b) Limited to:

(i) Bid prices before bid opening.

(ii) Proposed costs or prices.

(iii) Source selection plans.

(iv) Technical evaluation plans, or evaluation of programs.

(v) Cost or price evaluations.

(vi) Competitive range determinations.

(vii) Rankings of bids, proposals.

(viii)Reports of Source Selection Evaluation Board (SSEBs) or Source Selection Advisory Councils (SSACs).

(ix) Other information marked: "<u>*Source Selection Information*</u> *- See FAR 3.104)*"

d. The Appearance of Impropriety

(1) Basic Rule - Avoid the Appearance of Favoritism.

(2) What is done with one contractor should be done with other similarly situated contractors.

7. CONTACTS by FORMER SENIOR OFFICERS or EMPLOYEES SEEKING INFORMATION/OTHER ASSISTANCE

a. Periodically, Army employees seek the advice of their Ethics Counselors because a former officer or employee has contacted them and is seeking information or other assistance. Many times, this contact comes from a former senior Army official who may have been the

b. The Ethical Issues and Parameters of Such Contacts

You or any other agency employees who are contacted by a former officer or employee, such as a retired General Officer, for information or other assistance, need to ask and answer two questions:

(1) Does this contact violate any of the post-Government employment restrictions?

(2) Is it appropriate to provide the information or other assistance as requested?

c. Basic Restrictions on Contacts

(1) Your first concern should be whether the former official should be making the contact at all. There are criminal restrictions on certain types of contacts by former Government personnel. The most relevant are as follows:

(a) For one (1) year after leaving Government service, all former General Officers, members of the Senior Executive Service (Levels V and VI), and other former senior officials are prohibited from making any contact with or appearance before any official of the Government Agency in which they served in their last year, to attempt to influence any official action on behalf of someone else. If the senior official was paid at Level I of the Executive Schedule, the restriction is even broader.

(b) All former officers and employees, regardless of their rank, are prohibited forever from "switching sides" and representing someone else to attempt to influence official Government action concerning any particular matter involving a specific party in which they participate personally and substantially as a Government officer or employee. The prohibition lasts for only two (2) years if they did not participate in this particular matter, but they were supervising the action, i.e., it was under their official responsibility.

(2) A former officer or employee contacting you to merely seek information, even information that relates to particular matter with which he/she was involved as an Army officer or employee, might not violate the strict letter of the law. However, you might want to consider that "discretion is sometimes the better part of valor" and discourage such contacts to avoid inappropriate appearances. Contacts like these, especially those by former senior officers or employees during their first year after leaving the Government, could result in embarrassment or worse.

d. Former Employees Seeking Information

(1) One value of former Army officials to their new employers is their knowledge of the Army: its systems and processes, its personnel, and how to obtain and interpret information. However, former Government officials are required to protect and not exploit classified, proprietary, contractor bid or proposal, and other "inside information" (i.e., information obtained as part of his Government position which the Army would not release to the public under the Freedom of Information Act (FOIA)). Beyond that, they are free to market and use this valued experience for their own benefit and that of their new employers.

(2) However, one of the capabilities that former Army officials may not, or should not, attempt to market to their new employers is access! As a practical matter, retired senior officers or former officials certainly do have access to former colleagues and offices. As retired officers, they have access to military installations and organizations. Retired General Officers have even more access to current officials and information, even briefings, so that they are prepared to work with and assist the Army in the event of an emergency.

Notwithstanding this legitimate access, it is Illegal for former Army officials to use, exploit or market this access to their civilian employer.

(3) What if former officials does use their former positions to gain access to current Army officials and information that would not otherwise have been available to the public? Unless they do something illegal, such as violating the procurement integrity law, they are not subject to personal sanction. However, the current Army officials they approach and from whom they receive preferential treatment are subject to adverse action. The former Government employee puts the current employee at risk of being disciplined.

(4) Army officials' liability for giving preferential treatment by providing information to former officials include the following possible violations:

(a) Not adhering to basic obligations of public service as set out in Executive Order 12674.

(b) Use of public the private gain of friends or others with whom the employee is affiliated, or others, such as subordinates, to provide some benefit to persons with whom the official is affiliated te capacity.

(c) Use of nonpub ation to further someone else's private interest, whether through advice or recommendation, or by knowing unauthorized

8. Summary

a. Providing information or assistance is appropriate if, at the time of the request, you would readily release this information to any other member of the public, or there is some other official Army reason that the former official is entitled to the information. It is not appropriate to release information or provide assistance if the only reason is that the requester is a former colleague or senior official (the operative term here is “former”). Even if it is appropriate to release the information, it is not appropriate to provide an analysis, create additional information, or do projections if you would not do the same for others; the requester may have been entitled to your research and analysis as his or her former subordinate or colleague, but not just because he or she is a former senior officer or employee. In addition to the various possible violations of law and regulation, such favoritism creates terrible appearances and impugns the integrity of Army operations.

b. When you receive a contact and request for official information or other action from a former Army official, if you have any doubt as to the appropriateness of the contact or how you should respond, seek the advice of your Ethics Counselor.

9. RECEIPT OF GIFTS FROM PROHIBITED SOURCES

a. Generally, DoD employees may not accept gifts from a prohibited source or a gift that is offered because of the recipients official position. There are four steps to determining whether a gift may be accepted. (5 C.F.R. 2635.204)

(1) First, is it a "gift?" Items with little intrinsic value intended solely for presentation, benefits available to all military personnel in a particular geographic area, and coffee and donuts offered during a meeting are examples of "non-gifts."

(2) Second, if it is a "gift," is it a gift from prohibited source?

(a) A prohibited source is someone who does business with the employee's agency, seeks to do business with the agency, conducts activities regulated by the agency; or is an organization, a majority of whose members are prohibited sources.

(b) A gift merely given because of the recipient's official position cannot be accepted.

(3) Third, if it is a "prohibited source gift," does an exception apply? The exceptions are:

(a) A gift with a market value of $20 or less, not to exceed

(g) Free attendance at widely attended gatherings, typically conferences or seminars, when the supervisor determines it to be in the agency interest for the employee to attend.

(h) Gifts permitted by other statute, such as gifts from foreign governments accepted under the authority of 5 U.S.C. 7342 (retail value in United States may not exceed $285 [subject to change]).

(4) Fourth, if an exception applies, should it be used?

(a) Exceptions do not authorize bribes. If the intent behind a gift is to buy influence, it is a bribe.

(b) A gift may never be solicited or coerced.

(c) If the frequency of gifts would lead a reasonable person to believe that the employee is using public office for private gain, they may not be accepted.

b. Disposal of improper gifts. An Ethics Counselor may authorize any one of the following dispositions. (5 C.F.R. 2635.205).

(1) The gift may be converted to a gift to the agency, or to an appropriate morale, welfare and recreation activity.

(2) If perishable, the gift may be consumed in the office where received.

(3) The recipient may keep the gift, and pay the donor its cost.

(4) The gift may be returned to the donor.

c. If the value of gifts from a single source is $250 or more during a calendar year, they must be reported on public (SF 278) or confidential (SF 450) financial disclosure report.

10. FOREIGN GIFTS

a. References

(1) U.S. Constitution, article I, § 9,cl.8.

(2) 5 U.S.C.A. § 7342;

(3) Title 41, Code of Federal Regulations, Parts 101-49 and 101-45;

(4) DoD 5500.7-R, Joint Ethics Regulation § 2-300b;

(5) DoD 1005.13, Gifts from Foreign Governments (20 Jul 96).

b. Summary.

(1) DoD employees (including members of the uniformed services) MAY NOT request or

(3) Gifts from different officials of the same foreign government at the same presentation must be aggregated. If gifts are from different governmental levels (e.g., national, state, local and municipal), aggregate the levels separately.

(4) Gifts received at separate presentations, even on the same day and/or from the same foreign official, are separate gifts; their values are not aggregated.

(5) Gifts to a DoD employee's spouse are deemed gifts to the DoD employee, and gifts from a foreign official's spouse are deemed gifts from the foreign official.

(6) Gifts of travel (or expenses for travel) occurring entirely outside the United States, even if in excess of "minimal value".

(7) Gifts of more than "minimal value' may be accepted on behalf of the United States if refusing the gift would offend or embarrass the donor or adversely effect foreign relations. Gifts become government property.

(8) Within 60 days, gifts must be deposited with "employing DoD Component" for return to donor, use within the Component, or disposition by General Services Administration (GSA). (Army: Commander, PERSCOM, ATTN: TAPC-PDO-IP, Alexandria VA 22332-0474; Air Force: AFI 51-901, AFPC/DFFFRS, 550 C. Street West, Suite 12, Randolph AFB 78150-4714; Navy: SECNAVIST 1650.1F, Chapter 7.)

(9) Gifts retained by DoD Components must be used for benefit of all employees. GSA must be notified by SF 120, "Report of Excess of Personal Property," within 30 days following termination of official use.

(10) Gifts that DoD Components do not wish to retain must be reported to GSA with 30 days on SF 120, and held by the Component pending disposition instructions from GSA.

(11) Gifts for which GSA determines there are no federal requirements may be sold to recipient for appraised value (plus cost of appraisal).

(12) Recipients may recommend foreign gifts for donation to public agencies or nonprofit tax-exempt organizations for public display, reference or use.

(13) Firearms received as foreign gifts may be transferred to federal agencies or if not required for federal use, sold at GSA's discretion to interested recipients.

(14) DoD components must maintain records of foreign gifts or more than minimal value

(2) Other Official Participation: Under certain circumstances, employees in an official travel status may accept travel and related expenses to attend conferences and similar functions, in addition to free attendance at the event (31 U.S.C. § 1353).

c. Participation in a Personal Capacity

An employee attending an event in his personal capacity may accept a gift of free attendance if the event is "widely attended." The principle elements of a "widely attended gathering" are size and diversity. The following criteria must be satisfied for an employee to accept free attendance in a *personal* capacity:

(1) The event is open to members from throughout a given industry or profession (for example, a small dinner party of twelve people is not large enough to be "widely attended"); or persons with a diversity of views or interests are expected to be present (for example, a gathering of 100 company employees, to which one or two Government employees are invited, is not sufficiently diverse to be "widely attended").

(2) The employee's supervisor (in the grade of GS-12 or above, or a commissioned military officer) determines (verbally or in writing) that attendance is in the agency's interest because it will further agency programs and operations. The agency's interests may include promoting community relations or providing the opportunity to exchange views or technical information with members of a specific profession. If the person who invited the employee has interests that may be affected by execution of the employee's official duties, the supervisor must make a further written determination that the agency's interest in attendance outweighs the appearance of improper influence. Supervisors should make this determination in consultation with their Ethics Counselor.

(3) The event's sponsor bears the cost of free attendance or, if someone other than the sponsor bears the cost, one of the following is true:

(a) The sponsor (not the person bearing the cost) decides who to invite; or

(b) More than 100 persons are expected to attend, and the value of free attendance (including the value of free attendance for an invited spouse or guest) does not exceed $250.

(4) Attendance of Spouses or Other Guests: If the employee is

12. GUIDELINES FOR ACCEPTANCE of TRAVEL EXPENSES FROM NON-FEDERAL SOURCES **(31 U.S.C. § 1353)**

a. General Rules

(1) No solicitation – The offer of travel expenses (in-kind and by reimbursement) must be unsolicited and completely voluntary on the part of offeror.

(2) Only Official Travel – This is considered to be a gift to the Army. You may not accept personal benefits or gratuities under this law.

(3) Only For Conferences/Seminars – The statute applies only to attendance at conferences, seminars, speaking engagements, or similar events that take place away from the employee's duty station. This statute may not be used to accept travel to perform functions essential to agency mission (inspections, oversight visits, etc.) or to attend sales presentations.

b. How to Process an Offer**.**

(1) Reimbursement may not be claimed on a travel voucher for expenses that have been provided under this statute.

(2) The approval authority for the acceptance of travel expenses is the official who normally approves TDY travel. For the travel to be accepted, the approval authority must determine that the travel will result in a significant and direct benefit to the Army.

(3) Before the travel is accepted, the travel approval authority must also determine that the gift is not disqualified on conflict or interest grounds. The approval authority must conclude in writing that acceptance of the travel would not cause a reasonable person with knowledge of the relevant facts to questions the integrity of the Army's programs or operations. Written concurrence by the Ethics Counselor is required.

(4) Acceptance of benefits "in-kind" are preferred (that is, prepaid tickets and hotels), rather than reimbursement.

(5) If the travel expenses provided exceed $250, the traveler must submit a report within 30 days through the travel approval authority to the Ethics Counselor.

(6) A sample report form may be obtained from your ethics counselor. The report will be forwarded by the Ethics Counselor through the Army Standards of Conduct Office for filing with the U.S. Office of Government Ethics.

b. Summary.

(1) General Rule Employees must protect and conserve government property and use it (or allow its use) *only* for *authorized purposes*.

(2) Communications Systems Federal communications, equipment including governmental owned telephones, facsimile machines, electronic mail, and Internet systems) are available *FOR OFFICIAL USE ONLY (FOUO),* and authorized purposes.

(a) "*Official Use*" includes emergency communications, communications that are necessary in the interest of the government; and "morale and welfare "communications by DoD employees on extended deployments.

(b) "*Authorized purposes*" include brief calls home while TDY to notify family of official transportation or schedule changes.

(c) *Personal Communications From the Workplace Are Also Authorized*, if supervisor determines that:

i. communication does not adversely affect official duty performance;

ii. is of reasonable duration and frequency and made during personal time whenever possible;

iii. serves a legitimate public interest;

iv. does not reflect adversely on DoD; and (e) does not overburden the communication system or create any significant additional cost to DoD.

(3) Vehicles Government vehicles may only be used for official purposes.

(4) Personal Use of Other Governmental Resources Government resources (other than personnel, communications equipment and vehicles) may be used for personal purposes if supervisor determines that:

(a) the use does not adversely affect official duty performance;

(b) is of reasonable duration and frequency and occurs only during the employee's personal time; serves a legitimate public purpose;

(c) does not reflect adversely on DoD; and

(d) creates no significant additional cost to DoD.

(5) Support to non-federal entities Commanders may authorize limited use of DoD facilities and equipment (and DoD services necessary to properly use the equipment) in support of an event sponsored by a non-federal ent[illegible]xcept for fundraising and

14. SOLICITATION AND FUNDRAISING IN AN OFFICIAL CAPACITY

a. References

(1) 5 U.S.C. § 7353 (gifts to Federal employees)

(2) 18 U.S.C. § 201 (bribery)

(3) 18 U.S.C. § 209 (unlawful supplementation of federal salary)

(4) 31 U.S.C. § 3302(b) (the "Miscellaneous Receipts" statute)

(5) 31 U.S.C. § 1301(a) (the "Purpose" statute)

(6) 5 U.S.C. Appendix 4 (The Ethics Reform Act of 1989)

(7) Executive Order 12674 (12 April 1989)

***(8) Standards of Conduct for Employees of the Executive Branch,* 5 C.F.R. § 2635**

***(9) Joint Ethics Regulation (JER)*, DoD 5500.7-R (30 August 1993)**

***(10) Fundraising Activities*: Office of Government Ethics Memorandum (25 August 1993)**

***(11) Guidance on Analyzing Invitations to DoD Officials to Participate in Fundraising Activities and to Accept Gifts Related to Events*: DoD General Counsel Memo (18 August 1997).**

b. ProhibitionTitle 5, United States Code, Section 7353

Title 5, United States Code, Section 7353, prohibits all members of the Federal government from soliciting anything of value from a person who:

(1) does business with,

(2) seeks to do business with,

(3) is regulated by, or

(4) whose interests may be substantially affected by, the performance or nonperformance of an employee's duties.

(5) The 1989 Ethics Reform Act **Addressed the perception that government integrity needed to be reinforced. In Executive Order 12674, the President published 14 principles for the conduct of official business. Among other things, Principle 4 prohibits Federal employees from soliciting any gift or item of monetary value.**

d. President's 14 Principles - Office of Government Ethics

(OGE) published regulations prohibiting employees, acting in their official capacity, from Soliciting or Coercing the offering of a Gift. 5 C.F.R. 2635.202(c)(2);.702(a). In the same section, OGE notes that statutes punishing Bribery and Unlawful Supplementation of Salary, may also apply.

(3) Rule .808, Rejects the proposal that agencies have inherent authority to solicit funds when the solicitation would promote an agency's mission. Agencies may solicit funds only when explicitly authorized by Congress. Authority to accept gifts does not extend to solicitation of gifts.

(4) Rule .808 is consistent with the rules against augmentation of appropriations. Absent statutory authorization, an attempt to raise funds from sources outside the government violates the rules against augmentation.

(5) In addition to preserving Congress' power of the purse, the rules against augmentation are consistent with public policy. Soliciting an outside party naturally creates expectations. It creates the appearance a special relationship exists even when the donor is not given special treatment. Objective neutrality is the foundation for government integrity. Accordingly, any conduct creating the appearance of preferential treatment is prohibited. Reference I, para. 3-209;

15. PARTICIPATION IN NON-FEDERAL ENTITIES (NFE)/PRIVATE ORGANIZATIONS

a. Personal Participation - Permitted Activities.

(1) DoD employees, acting in their *personal* capacity, may join and participate in NFE activities.

(2) DoD employees may become officers and directors of private organization provided that the positions are not offered solely because of their Federal position and that they act exclusively outside of their official position. If the employee files a SF 278 or an OGE 450 financial disclosure report, the position as a NFE officer must be reported.

(3) DoD employees may engage in fundraising on behalf of NFEs provided that no DoD endorsement is implied, and as long as they do not personally solicit prohibited sources or their subordinates.

(4) DoD employees may make presentations and publish papers as part of NFE activities. If the presentation or paper deals with DoD operations or policies, there must be a disclaimer that the views presented are personal and do not represent DoD.

(5) Subject to supervisory approval, DoD employees may use official time and material to prepare presentations and papers for non-profit associations and learned societies.

c. Official Relationships - Permitted Activities.

(1) Attendance

Consistent with sound fiscal principles governing training expenses, DoD employees may attend meetings, conferences, seminars and similar events sponsored by NFEs, and may participate as panelists and speakers. DoD employees may not attend such events at government expense solely to acquire or maintain professional credentials that are minimum requirements to hold a DoD position.

(2) Liaison

DoD employees may serve as liaisons to NFEs when appointed by the appropriate commander. Liaisons may represent DoD in discussions, but cannot bind their DoD organization to any action. A liaison may not participate in the management of the NFE.

(3) Information Distribution

In accordance with public affairs regulations, official channels may be used to inform DoD employees of professional development events; scientific and technical events; and morale, welfare and recreation events sponsored by NFEs.

(4) Logistic Support to NFE Events

On a limited basis, DoD facilities and equipment (and the personnel necessary for proper use of the equipment) may be provided when the head of the DoD command or organization determines:

(a) The support does not interfere with the performance of official duties and does not detract from readiness.

(b) The support promotes legitimate DoD community relations, public relations or recruiting interests, or military training objectives can be met by providing the support.

(c) The event is appropriate for DoD support.

(d) The command is able and willing to provide the same support to comparable events sponsored by similar organ

(e) No admission fe e reasonable cost of the event itself will be charged, or no fee will be charged for that e event supported by DoD.

(f) The support is not restricted by other statutes.

d. Official Relationships **-** Prohibited Activities**.**

(1) Management. Unless authorized by statute, DoD employees acting in their official capacity may not participate in management of NFEs.

(2) Fundraising/ Membership Drives. Except for certain authorized organizations, including organizations composed primarily of DoD employees or their dependents when fund raising within the DoD community or, if a National Guard Member, charitable, community and civic organizations identified in 32 U.S.C. 508 or DoD Directive 1100.20, a DoD employee may not officially endorse a NFE's fundraising or membership drive.

(3) Endorsement. In dealing with NFEs, DoD employees shall not engage in preferential treatment. This includes no official endorsement of a NFE, or any event, product, service or enterprise of a NFE. (Offering group life insurance programs sponsored by the State Military Department, similar to the Servicemen's Group Life insurance Program, is not a prohibited endorsement.)

(4) Support. DoD will not provide support to NFE activities unless there is a valid agency interest. There must be some benefit to the agency before extending even minimal support, such as providing a liaison.

16. PRIVATE ORGANIZATION FUNDRAISING & LOGISTICAL SUPPORT BY ARMY AGENCIES

a. A Post Commander may provide logistical support to NFE fundraising activities on his installation only if he has obtained permission, in advance, from the Office of Personnel Management (OPM). The reason for this rule is that most NFEs are affiliated with the Combined Federal Campaign (CFC). As such, all fund-raising by the organization should be within the context of the CFC. This rule would also apply to a local chapters which are affiliated with the CFC. [NOTE: OPM has indicated that, generally, it will not approve exceptions for fund-raising outside of the CFC.]

Example: The local Amvets chapter, a CFC affiliate, wants to host a fund-raising 10K race on post and asks for logistical support. Without OPM approval, the Post Commander cannot approve either the race or the support.

b. The exception to this general rule is when the NFE fund-raising event is in direct response to an OPM approved emergency or disaster relief appeal.

d. OPM approval is not required if the fund-raising does not occur in the Federal workplace. The Federal workplace includes, by definition, the entire DoD installation. The installation commander may, however, designate limited areas as public places on the installation where similarly situated groups may solicit funds.

Example: The Red Cross has asked whether it can set up a card table and a "Cross Your Heart" display soliciting donations outside of the PX on Valentine's Day weekend. In the past the Post Commander designated this area as a public area. He has authorized both the Girl Scouts to sell cookies and the Disabled American Veterans to sell poppies in this area. The Commander has the authority to authorize the Red Cross appeal in the same place because it is a designated public area, and similar organizations have been granted access in the past.

e. After obtaining OPM approval for an on-post an NFE fund-raising event, a commander may provide logistical support. On a limited basis, DoD facilities and equipment (and the personnel necessary for proper use of the equipment) may be provided when the head of the DoD command determines:

(1) The support does not interfere with the performance of official duties and does not detract from readiness.

(2) The support promotes legitimate DoD community relations, public relations or recruiting interests, or military training objectives can be met by providing the support.

(3) The event is appropriate for DoD support.

(4) The command is able and willing to provide the same support to comparable events sponsored by similar organizations.

(5) No admission fee beyond the reasonable cost of the event itself will be charged, or no fee will be charged for that portion of the event supported by DoD. (That is, DoD support to an event must be incidental to the fund-raising purpose, and cannot be the basis of the fund-raising.)

(6) The support is not restricted by other statutes.

Example: The USO has obtained OPM approval to conduct a fund-raising concert in conjunction with the CFC. Local celebrities and entertainers have offered their services.

c. One exception to this rule is that employees may accept travel expenses for unofficial teaching, speaking or writing that is related to their duties when it "deals in significant part with . . . [a]ny ongoing or announced policy, program or operation of the agency." 5 C.F.R. § 2635.807(a)(2)(i)(E)(2).

d. This rule also does not prohibit receiving payment for:

(1) Teaching at an accredited educational institution even if the instruction is based upon work done for the government; or

(2) Teaching, speaking or writing which is based upon general professional training or educational background, even when the topic falls within the employee's area of employment. *For example*, a rocket scientist can be paid for presenting a paper on orbital physics, so long as it is prepared on his own time and does not draw substantially from work he has done for the government. Academic information and material which would otherwise be available to the public may be used.

18. SEEKING OUTSIDE EMPLOYMENT WHILE STILL A GOVERNMENT EMPLOYEE

a. Seeking employment and official duties.

(1) If you are seeking employment from an organization, you may not participate personally and substantially (through decision, approval, disapproval, recommendation, advice, investigation or otherwise) in any Government matter (e.g., contract, source selection, claim, sale of asset) in which the organization has a financial interest.

(a) <u>BEFORE</u> you begin to seek employment with a particular organization (i.e., <u>before</u> you send the resume or have the first employment discussion), you must be disqualified from performing any official duties that have a direct and predictable effect on the financialinterests of that organization.

(b) The disqualification must be in writing. Your supervisor is not required to approve your request for disqualification from duties. A disqualification letter can disqualify you from duties involving one or many organizations. In addition to notifying your supervisor, you should notify your co-workers that you are prohibited from working on matters involving the organization so they will not ask you to do so.

(2) If you seek employment with an organization, and you do <u>not</u> have any duties involving that organization, you are not required to be disqualified from duties

(2) If you were disqualified from duties and sought employment (by having discussions or giving a resume), you may not end the disqualification and resume official duties involving the organization unless: (a) either you or the organization rejected the possibility of employment and all employment discussions have ended, or (2) two months have passed since you sent an unsolicited resume or employment proposal to the organization, and you received no indication of interest from the organization.

c. Employment research firms. You may use an employment search firm (i.e., headhunter) when seeking post-Government employment. An employment search firm may contact, on your behalf, organizations that have no relation to your Government duties. An employment search firm may also contact on your behalf, an organization, where you are participating in a Government matter that affects the organization's financial interests, as long as the employment search firm does not inform you that it has contacted the organization (and assuming that you have not asked the employment search firm to contact the organization). Once the employment search firm informs you that it has contacted the organization, and you may not participate personally and substantially in any government matter that affects the organization's financial interests.

d. Duty to report certain employment contacts. The Procurement Integrity Act provides that if you are participating personally and substantially in a procurement, and you contact, or are contacted by, a bidder or offeror in that procurement regarding possible employment, you must do two things. You must promptly report the contact in writing to your supervisor and to the designated agency ethics official (or designee). Further, you must either reject the possibility of employment, or disqualify yourself from further personal and substantial participation in the procurement (until you have been authorized to resume participation in the procurement).

e. Interviewing expenses. You may accept reimbursement from a prospective employer for meals, lodging, transportation, and ts in connection with bona fide employment di ong as: (1) you do not have duties that can affect the ir prospective employer (t be first become disqualified from performing duties involving the organization), and (2) the b ceive are "customarily" provided by the prospective employer to the people being interviewed (i.e., the benefits you receive are not

19. POST-GOVERNMENT EMPLOYMENT RESTRICTIONS

a. Sharing in Profits. Senior appointees who work for a firm representing clients before either the Executive Branch or any court where the United States has an interest, are prohibited from sharing in profits earned by the firm for those matters.

b. 1-year No Contact Rule. Senior appointees are restricted for one year after leaving Government service from trying to influence their former agency (i.e., Army) by making, any communication to, or appearance before, any employee of their former agency, with the intent to influence that employee, on behalf of any third person, in connection with any matter on which the third person seeks official action by their former agency. This ban includes people serving at Levels II-V of the Executive Schedule, those paid above the rate for level 4 of the SES, and military officers above 0-6.

c. Lifetime Representation Ban. Senior appointees who participated personally and substantially in a particular Government matter (e.g., contract, claim, sale of asset) are prohibited for life from representing a contractor (or any other third party) before their former agency or any other Federal agency, in connection with that contract or other matter. Behind-the-scenes assistance to the contractor (or other party) is permitted.

d. 2-year Representation Ban. Senior appointees who had a contract or other particular matter under their official responsibility during their last year in the Government are prohibited, for [illegible] years, from representing the contractor (or any other third [illegible] or any other Federal agency, in connection with [illegible] contract or other matter. Again, behind-the-scenes assistance is permitted.

e. 1-year Trade or Treaty Ban. Army employees who worked on certain trade or treaty negotiations during their final year of Government service and had access to certain restricted information are barred for one year from assisting anyone other than the United States concerning those restrictions, on the basis of the restricted information.

Improper Business Practices and Personal Conflicts of Interest

CHAPTER 7 Section C

FAR Part 3

3.000 Scope of Part

This part prescribes policies and procedures for avoiding improper business practices and personal conflicts of interest and for dealing with their apparent or actual occurrence.

Subpart 3.1 Safeguards

3.101 Standards of Conduct

3.101-1 General

Government business shall be conducted in a manner above reproach **and, except as authorized by statute or regulation, with complete impartiality and with preferential treatment for none.** ***Transactions relating to the expenditure of public funds require the highest degree of public trust and an impeccable standard of conduct.*** **The general rule is to avoid strictly any conflict of interest or even the appearance of a conflict of interest in Government-contractor relationships. While many Federal laws and regulations place restrictions on the actions of Government personnel, their official conduct must, in addition, be such that they would have no reluctance to make a full public disclosure of their actions.**

3.101-2 Solicitation and Acceptance of Gratuities by Government Personnel

As a rule, NO **Government employee may solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who**

(a) has or is seeking to obtain Government business with the employee's agency,

(b) conducts activities that are regulated by the employee's agency, or

(c) has interests that may be substantially affected by the performance or nonperformance of the employee's official duties. Certain limited exceptions are authorized in agency regulations.

3.101-3 Agency Regulations

3.103 Independent Pricing

3.103-1 Solicitation Provision

The contracting officer shall insert the provision at 52.203-2, Certificate of Independent Price Determination, in solicitations when a firm-fixed-price contract or fixed-price contract with economic price adjustment is contemplated, unless-

(a) The acquisition is made under the simplified acquisition procedures in Part 13;

(b) [Reserved]

(c) The solicitation is a request for technical proposals under two-step sealed bidding procedures; or

(d) The solicitation is for utility services for which rates are set by law or regulation.

3.103-2 Evaluating the Certification

(a) Evaluation Guidelines

(1) None of the following, in and of itself, constitutes "disclosure" as it is used in paragraph (a)(2) of the Certificate of Independent Price Determination (hereafter, the certificate):

(i) The fact that a firm has published price lists, rates, or tariffs covering items being acquired by the Government.

(ii) The fact that a firm has informed prospective customers of proposed or pending publication of new or revised price lists for items being acquired by the Government.

(iii) The fact that a firm has sold the same items to commercial customers at the same prices being offered to the Government.

(2) For the purpose of paragraph (b)(2) of the certificate, an individual may use a blanket authorization to act as an agent for the person(s) responsible for determining the offered prices if-

(i) The proposed contract to which the certificate applies is clearly within the scope of the authorization; and

(ii) The person giving the authorization is the person within the offeror's organization who is responsible for determining the prices being offered at

(2) If the offeror deleted or modified paragraph (a)(2) of the certificate, the offeror must have furnished with its offer a signed statement of the circumstances of the disclosure of prices contained in the bid or proposal. The chief of the contracting office shall review the altered certificate and the statement and shall determine, in writing, whether the disclosure was made for the purpose or had the effect of restricting competition. If the determination is positive, the bid or proposal shall be rejected; if it is negative, the bid or proposal shall be considered for award.

(3) Whenever an offer is rejected under paragraph (b)(1) or (b)(2) of this section, or the certificate is suspected of being false, the contracting officer shall report the situation to the Attorney General in accordance with 3.303.

(4) The determination made under paragraph (b)(2) of this section shall not prevent or inhibit the prosecution of any criminal or civil actions involving the occurrences or transactions to which the certificate relates.

3.103-3 The Need for Further Certifications

A contractor that properly executed the certificate before award does not have to submit a separate certificate with each proposal to perform a work order or similar ordering instrument issued pursuant to the terms of the contract, where the Government's requirements cannot be met from another source.

3.104 Procurement Integrity

3.104-1 Definitions

As used in this section, "Agency ethics official" means the designated agency ethics official described in 5 CFR 2638.201 or other designated person, including-

(a) Deputy ethics officials described in 5 CFR 2638.204, to whom authority under 3.104-6 has been delegated by the designated agency ethics official; and

(b) Alternate designated agency ethics officials described in 5 CFR 2638.202(b).
"Compensation" means wages, salaries, honoraria, commissions, professional fees, and any other form of compensation, provided directly or indirectly for services rendered. Compensation is indirectly provided if it is paid to an entity other than the individual, specifically in exchange for services provided by the individual.

(4) Information marked by the contractor as "contractor bid or proposal information" in accordance with applicable law or regulation.

(5) Information marked in accordance with 52.215-1(e). "Decision to award a subcontract or modification of subcontract" means a decision to designate award to a particular source.

(d) "Federal agency procurement" means the acquisition (by using competitive procedures and awarding a contract) of goods or services (including construction) from non-Federal sources by a Federal agency using appropriated funds. For broad agency announcements and small business innovative research programs, each proposal received by an agency constitutes a separate procurement for purposes of the Act.

(e) "In excess of $10,000,000" means-

(1) The value, or estimated value, at time of award, of the contract, including all options;

(2) The total estimated value at the time of award of all orders under an indefinite-delivery, indefinite-quantity, or requirements contract;

(3) Any multiple award schedule contract, unless the contracting officer documents a lower estimate;

(4) The value of a delivery order, task order, or an order under a Basic Ordering Agreement;

(5) The amount paid or to be paid in settlement of a claim; or

(6) The estimated monetary value of negotiated overhead or other rates when applied to the Government portion of applicable allocation base.

(f) "Official" means-

(1) An officer, as defined in 5 U.S.C. 2104;

(2) An employee, as defined in 5 U.S.C. 2105;

(3) A member of the uniformed services, as defined in 5 U.S.C. 2101(3); or

(4) A special Government employee, as defined in 18 U.S.C. 202.

(g) "Participating personally and substantially in a Federal agency procurement" means active and significant involvement of an official in any of the following activities directly related to that procurement:

(1) Drafting, reviewing, or approving the specification or statement of work for the procurement.

(i) "Participating substantially" means that the official's involvement is of significance to the matter. Substantial participation requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. Participation may be substantial even though it is not determinative of the outcome of a particular matter. A finding of substantiality should be based not only on the effort devoted to a matter, but on the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approving or participating in a critical step may be substantial. However, the review of procurement documents solely to determine compliance with regulatory, administrative, or budgetary procedures, does not constitute substantial participation in a procurement.

(j) Generally, an official will not be considered to have participated personally and substantially in a procurement solely by participating in the following activities:

(1) Agency-level boards, panels, or other advisory committees that review program milestones or evaluate and make recommendations regarding alternative technologies or approaches for satisfying broad agency-level missions or objectives.

(2) The performance of general, technical, engineering, or scientific effort having broad application not directly associated with a particular procurement, notwithstanding that such general, technical, engineering, or scientific effort subsequently may be incorporated into a particular procurement.

(3) Clerical functions supporting the conduct of a particular procurement.

(4) For procurements to be conducted under the procedures of OMB Circular A-76, participation in management studies, preparation of in-house cost estimates, preparation of "most efficient organization "analyses, and furnishing of data or technical support to be used byothers in the development of performance standards, statements of work, or specifications.

(k) "Source selection evaluation board" means any board, team, council, or other group that evaluates bids or proposals.

3.104-2 General

(a) This section implements section 27 of the Office of Federal Procurement Policy Act (the Procurement Integrity Act) (41 U.S.C. 423) referred to as "the Act"). Agency supplementation of 3.104, including specific

(i) Promptly report the contact in writing to the official's supervisor and to the agency ethics official; and

(ii) Either reject the possibility of non-Federal employment or disqualify himself or herself from further personal and substantial participation in that Federal agency procurement (see 3.104-5) until such time as the agency authorizes the official to resume participation in that procurement, in accordance with the requirements of 18 U.S.C. 208 and applicable agency regulations, because-

(A) The person is no longer an offeror in that Federal agency procurement; or

(B) All discussions with the offeror regarding possible non-Federal employment have terminated without an agreement or arrangement for employment.

(2) A contact is any of the actions included as "seeking employment“ in 5 CFR 2635.603(b). In addition, unsolicited communications from offerors regarding possible employment are considered contacts.

(3) Agencies must retain reports of employment contacts for 2 years from the date the report was submitted.

(4) Conduct that complies with subsection 27(c) of the Act may be prohibited by other criminal statutes and the Standards of Ethical Conduct for Employees of the Executive Branch. See 3.104-2(b)(2).

(d) *Prohibition on former official's acceptance of compensation from a contractor (subsection 27(d) of the Act).*

(2) Contacts with an offeror during the conduct of an acquisition may constitute "seeking employment," (see subpart F of 5 CFR part 2636 and 3.104-3(c)(2)). Government officers and employees (employees) are prohibited by 18 U.S.C. 208 and 5 CFR part 2635 from participating personally and substantially in any particular matter that would affect the financial interests of any person with whom the employee is seeking employment. An employee who engages in negotiations or is otherwise seeking employment with an offeror or who has an arrangement concerning future employment with an offeror must comply with the applicable disqualification requirements of

(5) Release of information both before and after award (see 3.104-4) may be prohibited by the Privacy Act (5 U.S.C. 552a), the Trade Secrets Act (18 U.S.C. 1905), and other laws; and

(6) Using nonpublic information to further an employee's private interest or that of another and engaging in a financial transaction using nonpublic information are prohibited by 5 CFR 2635.703.

3.104-3 Statutory and Related Prohibitions, Restrictions, and Requirements

(a) *Prohibition on disclosing procurement information (subsection 27(a) of the Act*).

(1) A person described in paragraph (a)(2) of this subsection must not, other than as provided by law, knowingly disclose contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates. (See 3.104-4(a).)

(2) Paragraph (a)(1) of this subsection applies to any person who-

(i) Is a present or former official of the United States, or a person who is acting or has acted for or on behalf of, or who is advising or has advised the United States with respect to, a Federal agency procurement; and

(ii) By virtue of that office, employment, or relationship, has or had access to contractor bid or proposal information or source selection information.

(b) *Prohibition on obtaining procurement information (subsection 27(b) of the Act*). A person must not, other than as provided by law, knowingly obtain contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates.

(1) A former official of a Federal agency may not accept compensation from a contractor that has been awarded a competitive or sole source contract, as an employee, officer, director, or consultant of the contractor within a period of 1 year after such former official-

(i) Served, at the time of selection of the contractor or the

(D) Pay or settle a claim in excess of $10,000,000 with that contractor.

(2) The 1-year prohibition begins on the date-

(i) Of contract award for positions described in paragraph (d)(1)(i) of this subsection, or the date of contractor selection if the official was not serving in the position on the date of award;

(ii) The official last served in one of the positions described in paragraph (d)(1)(ii) of this subsection; or

(iii) The official made one of the decisions described in paragraph (d)(1)(iii) of this subsection.

(3) Nothing in paragraph (d)(1) of this subsection may be construed to prohibit a former official of a Federal agency from accepting compensation from any division or affiliate of a contractor that does not produce the same or similar products or services as the entity of the contractor that is responsible for the contract referred to in paragraph (d)(1) of this subsection.

3.104-4 Disclosure, Protection, and Marking of Contractor Bid or Proposal Information and Source Selection Information

(a) Except as specifically provided for in this subsection, no person or other entity may disclose contractor bid or proposal information or source selection information to any person other than a person authorized, in accordance with applicable agency regulations or procedures, by the agency head or the contracting officer to receive such information.

(b) Contractor bid or proposal information and source selection information must be protected from unauthorized disclosure in accordance with 14.401, 15.207, applicable law, and agency regulations.

(c) Individuals unsure if particular information is source selection information, as defined in 2.101, should consult with agency officials as necessary. Individuals responsible for preparing material that may be source selection information as described at paragraph (10) of the "source selection information" definition in 2.101 must mark the cover page and each page that the individual believes contains source selection information with the legend "*Source Selection Information-See FAR 2.101 and 3.104.*" Although the information in paragraphs (1) through (9) of the definition in 2.101 is considered to be source selection

(3) For technical data marked as proprietary by a contractor, the contracting officer must follow the procedures in 27.404(h).

(e) This section does not restrict or prohibit-

(1) A contractor from disclosing its own bid or proposal information or the recipient from receiving that information;

(2) The disclosure or receipt of information, not otherwise protected, relating to a Federal agency procurement after it has been canceled by the Federal agency, before contract award, unless the Federal agency plans to resume the procurement;

(3) Individual meetings between a Federal agency official and an offeror or potential offeror for, or a recipient of, a contract or subcontract under a Federal agency procurement, provided that unauthorized disclosure or receipt of contractor bid or proposal information or source selection information does not occur; or

(4) The Government's use of technical data in a manner consistent with the Government's rights in the data.

(f) This section does not authorize-

(1) The withholding of any information pursuant to a proper request from the Congress, any committee or subcommittee thereof, a Federal agency, the Comptroller General, or an Inspector General of a Federal agency, except as otherwise authorized by law or regulation. Any release containing contractor bid or proposal information or source selection information must clearly identify the information as contractor bid or proposal information or source selection information related to the conduct of a Federal agency procurement and notify the recipient that the disclosure of the information is restricted by section 27 of the Act;

(2) The withholding of information from, or restricting its receipt by, the Comptroller General in the course of a protest against the award or proposed award of a Federal agency procurement contract;

(3) The release of information after award of a contract or cancellation of a procurement if such information is contractor bid or proposal information or source selection information that pertains to another procurement; or

(b) *Disqualification notice*. In addition to submitting the contact report required by 3.104-3(c)(1), an agency official who must disqualify himself or herself pursuant to 3.104-3(c)(1)(ii) must promptly submit written notice of disqualification from further participation in the procurement to the contracting officer, the source selection authority if other than the contracting officer, and the agency official's immediate supervisor. As a minimum, the notice must-

(1) Identify the procurement;

(2) Describe the nature of the agency official's participation in the procurement and specify the approximate dates or time period of participation; and

(3) Identify the offeror and describe its interest in the procurement.

(c) *Resumption of participation in a procurement*.

(1) The official must remain disqualified until such time as the agency, at its sole and exclusive discretion, authorizes the official to resume participation in the procurement in accordance with 3.104-3(c)(1)(ii).

(2) After the conditions of 3.104-3(c)(1)(ii)(A) or (B) have been met, the head of the contracting activity (HCA), after consultation with the agency ethics official, may authorize the disqualified official to resume participation in the procurement, or may determine that an additional disqualification period is necessary to protect the integrity of the procurement process. In determining the disqualification period, the HCA must consider any factors that create an appearance that the disqualified official acted without complete impartiality in the procurement. The HCA's reinstatement decision should be in writing.

(3) Government officer or employee must also comply with the provisions of 18 U.S.C. 208 and 5 CFR part 2635 regarding any resumed participation in a procurement matter. Government officer or employee may not be reinstated to participate in a procurement matter affecting the financial interest of someone with whom the individual is seeking employment, unless the individual receives-

(i) A waiver pursuant to 18 U.S.C. 208(b)(1) or (b)(3); or

(ii) An authorization in accordance with the requirements of Subpart F of 5 CFR part

(2) Individual's participation in the procurement or decision, including the dates or time periods of that participation, and the nature of the individual's duties, responsibilities, or actions; and

(3) Contractor, including a description of the products or services produced by the division or affiliate of the contractor from whom the individual proposes to accept compensation.

(c) Within 30 days after receipt of a request containing complete information, or as soon thereafter as practicable, the agency ethics official should issue an opinion on whether the proposed conduct would violate subsection 27(d) of the Act.

(d) (1) If complete information is not included in the request, the agency ethics official may ask the requester to provide more information or request information from other persons, including the source selection authority, the contracting officer, or the requester's immediate supervisor.

(2) In issuing an opinion, the agency ethics official may rely upon the accuracy of information furnished by the requester or other agency sources, unless he or she has reason to believe that the information is fraudulent, misleading, or otherwise incorrect.

(3) If the requester is advised in a written opinion by the agency ethics official that the requester may accept compensation from a particular contractor, and accepts such compensation in good faith reliance on that advisory opinion, then neither the requester nor the contractor will be found to have knowingly violated subsection 27(d) of the Act. If the requester or the contractor has actual knowledge or reason to believe that the opinion is based upon fraudulent, misleading, or otherwise incorrect information, their reliance upon the opinion will not be deemed to be in good faith.

3.104-7 Violations or Possible Violations

(a) A contracting officer who receives or obtains information of a violation or possible violation of subsection 27(a), (b), (c), or (d) of the Act (see 3.104-3) must determine if the reported violation or possible violation has any impact on the pending award or selection of the contractor.

(1) Advise the contracting officer to continue with the procurement;

(2) Begin an investigation;

(3) Refer the information disclosed to appropriate criminal investigative agencies;

(4) Conclude that a violation occurred; or

(5) Recommend that the agency head determine that the contractor, or someone acting for the contractor, has engaged in conduct constituting an offense punishable under subsection 27(e) of the Act, for the purpose of voiding or rescinding the contract.

(c) Before concluding that an offeror, contractor, or person has violated the Act, the HCA may consider that the interests of the Government are best served by requesting information from appropriate parties regarding the violation or possible violation.

(d) If the HCA concludes that section 27 of the Act has been violated, the HCA may direct the contracting officer to-

(1) If a contract has not been awarded-

(i) Cancel the procurement;

(ii) Disqualify an offeror; or

(iii) Take any other appropriate actions in the interests of the Government.

(2) If a contract has been awarded-

(i) Effect appropriate contractual remedies, including profit recapture under the clause at 52.203-10, Price or Fee Adjustment for Illegal or Improper Activity, or, if the contract has been rescinded under paragraph (d)(2)(ii) of this subsection, recovery of the amount expended under the contract;

(ii) Void or rescind the contract with respect to which-

(A) The contractor or someone acting for the contractor has been convicted for an offense where the conduct constitutes a violation of subsections 27(a) or (b) of the Act for the purpose of either-

(I) Exchanging the information covered by the subsections for anything of value; or

(II) Obtaining or giving anyone a competitive advantage in the award of a

(b) The HCA must review all information available and, in accordance with agency procedures, take appropriate action, such as-

(1) Advise the contracting officer to continue with the procurement;

(2) Begin an investigation;

(3) Refer the information disclosed to appropriate criminal investigative agencies;

(4) Conclude that a violation occurred; or

(5) Recommend that the agency head determine that the contractor, or someone acting for the contractor, has engaged in conduct constituting an offense punishable under subsection 27(e) of the Act, for the purpose of voiding or rescinding the contract.

(c) Before concluding that an offeror, contractor, or person has violated the Act, the HCA may consider that the interests of the Government are best served by requesting information from appropriate parties regarding the violation or possible violation.

(d) If the HCA concludes that section 27 of the Act has been violated, the HCA may direct the contracting officer to-

(1) If a contract has not been awarded-

(i) Cancel the procurement;

(ii) Disqualify an offeror; or

(iii) Take any other appropriate actions in the interests of the Government.

(2) If a contract has been awarded-

(i) Effect appropriate contractual remedies, including profit recapture under the clause at 52.203-10, Price or Fee Adjustment for Illegal or Improper Activity, or, if the contract has been rescinded under paragraph (d)(2)(ii) of this subsection, recovery of the amount expended under the contract;

(ii) Void or rescind the contract with respect to which-

(A) The contractor or someone acting for the contractor has been convicted for an offense where the conduct constitutes a violation of subsections 27(a) or (b) of the Act for the purpose of either-

(I) Exchanging the information covered by the subsections for anything of value; or

(II) Obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; or

(g) The HCA may delegate his or her authority under this subsection to an individual at least one organizational level above the contracting officer and of General Officer, Flag, Senior Executive Service, or equivalent rank.

3.104-8 Criminal and Civil Penalties, and Further Administrative Remedies

Criminal and civil penalties, and administrative remedies, may apply to conduct that violates the Act (see 3.104-3). See 33.102(f) for special rules regarding bid protests. See 3.104-7 for administrative remedies relating to contracts.

(a) An official who knowingly fails to comply with the requirements of 3.104-3 is subject to the penalties and administrative action set forth in subsection 27(e) of the Act.

(b) An offeror who engages in employment discussion with an official subject to the restrictions of 3.104-3, knowing that the official has not complied with 3.104-3(c)(1), is subject to the criminal, civil, or administrative penalties set forth in subsection 27(e) of the Act.

(c) An official who refuses to terminate employment discussions (see 3.104-5) may be subject to agency administrative actions under 5 CFR 2635.604(d) if the official's disqualification from participation in a particular procurement interferes substantially with the individual's ability to perform assigned duties.

3.104-9 Contract Clauses.

In solicitations and contracts for other than commercial items that exceed the simplified acquisition threshold, insert the clauses at-

(a) 52.203-8, Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity; and

(b) 52.203-10, Price or Fee Adjustment for Illegal or Improper Activity.

CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (Jan1997)

(a) If the Government receives information that a contractor or a person has engaged in conduct constituting a violation of subsection (a), (b), (c), or (d) of section 27 of the Office of Federal Procurement Policy Act (41U.S.C. 423) (the Act), as amended by section 4304 of the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104-106), the Government may--

(1) Cancel the solicitation, if the contract has not yet been awarded or issued; or

(2) Rescind the contract with respect to which--

FIGURE 46

PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (Jan 1997)

(a) The Government, at its election, may reduce the price of a fixed-price type contract and the total cost and fee under a cost-type contract by the amount of profit or fee determined as set forth in paragraph (b) of this clause if the head of the contracting activity or designee determines that there was a violation of subsection 27(a), (b), or (c) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in section 3.104 of the Federal Acquisition Regulation.

(b) The price or fee reduction referred to in paragraph (a) of this clause shall be --

(1) For cost-plus-fixed-fee contracts, the amount of the fee specified in the contract at the time of award;

(2) For cost-plus-incentive-fee contracts, the target fee specified in the contract at the time of award, notwithstanding any minimum fee or "fee floor" specified in the contract;

(3) For cost-plus-award-fee contracts --

(i) The base fee established in the contract at the time of contract award;

(ii) If no base fee is specified in the contract, 30 percent of the amount of each award fee otherwise payable to the Contractor for each award fee evaluation period or at each award fee determination point.

(4) For fixed-price-incentive contracts, the Government may --

(i) Reduce the contract target price and contract target profit both by an amount equal to the initial target profit specified in the contract at the time of contract award; or

(ii) If an immediate adjustment to the contract target price and contract target profit would have a significant adverse impact on the incentive price revision relationship under the contract, or adversely affect the contract financing provisions, the Contracting Officer may defer such adjustment until establishment of the total final price of the contract. The total final price established in accordance with the incentive price revision provisions of the contract shall be reduced by an amount equal to the initial target profit specified in the contract at the time of contract award and such reduced price shall be the total final contract price.

(5) For firm-fixed-price contracts, by 10 percent of the initial contract price or a profit amount determined by the Contracting Officer from records or documents in existence prior to the date of the contract award.

FIGURE 47

(c) The Government may, at its [illegible] reduce a prime contractor's price

(2) Individual's participation in the procurement or decision, including the dates or time periods of that participation, and the nature of the individual's duties, responsibilities, or actions; and

(3) Contractor, including a description of the products or services produced by the division or affiliate of the contractor from whom the individual proposes to accept compensation.

(c) Within 30 days after receipt of a request containing complete information, or as soon thereafter as practicable, the agency ethics official should issue an opinion on whether the proposed conduct would violate subsection 27(d) of the Act.

(d) (1) If complete information is not included in the request, the agency ethics official may ask the requester to provide more information or request information from other persons, including the source selection authority, the contracting officer, or the requester's immediate supervisor.

(2) In issuing an opinion, the agency ethics official may rely upon the accuracy of information furnished by the requester or other agency sources, unless he or she has reason to believe that the information is fraudulent, misleading, or otherwise incorrect.

(3) If the requester is advised in a written opinion by the agency ethics official that the requester may accept compensation from a particular contractor, and accepts such compensation in good faith reliance on that advisory opinion, then neither the requester nor the contractor will be found to have knowingly violated subsection 27(d) of the Act. If the requester or the contractor has actual knowledge or reason to believe that the opinion is based upon fraudulent, misleading, or otherwise incorrect information, their reliance upon the opinion will not be deemed to be in good faith.

3.104-7 Violations or Possible Violations

(a) A contracting officer who receives or obtains information of a violation or possible violation of subsection 27(a), (b), (c), or (d) of the Act (see 3.104-3) must determine if the reported violation or possible violation has any impact on the pending award or selection of the contractor.

(1) If the contracting officer concludes that there is no impact

5. COOPERATION WITH INVESTIGATION

a. CORs shall Cooperate with Investigators and legal counsel by providing documents and information available through their normal contract administration duties. Significant costs incurred in connection with supporting an investigation shall be tracked for cost recovery purposes. Requests for information that is not available through performance of routine contract administration shall be referred to Fraud Counsel.

b. Requests for information from non-government sources shall be referred to Fraud Counsel. CORs shall perform normal contract administration duties without interferingwith investigation. Routine contact administration should continue during an investigation, as long as it does not impact or affect issues under investigation. If routine contract administration action may affect an investigation, but is necessary or otherwise appropriate, the ACO or COR/QAR or other employee shall consult Fraud Counsel, Program Office, CO or ACO before taking (or not taking) such action.

c. Attention to contract modifications and requests for waivers on contracts under investigation is important, and shall be coordinated with the CO and Fraud Counsel. Routine process or product audits at contractors being investigated for non-conformance should be coordinated with the CO and Fraud Counsel.

. SUSPENSION/DEBARMENT RECOMMENDATION

The CO or ACO, with coordination and assistance from Fraud Counsel, shall write and submit the required by FARS 209.40 or: At an investigation, or ac or if the matter is not gati employee re cted shall be ebriefed by Fr e gency egardless of a aken

IMPROPER INFLUENCE ON GOVERNMENT DECISIONS

Decisions must be *Objective* i ct & appearance.

FIGURE 48

a. Bribery

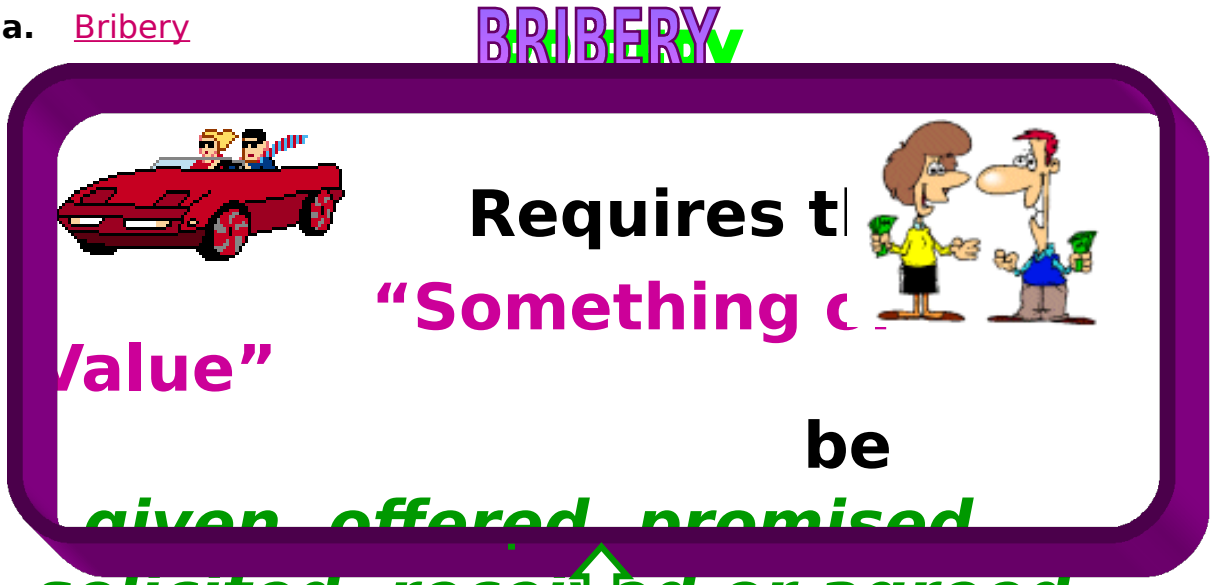


FIGURE 49

(1) It is a criminal offense to offer or give a bribe to a government official or for a government official to solicit or receive a bribe. To constitute bribery, the statute requires that “something of value” be given, offered, promised, solicited or received, with intent to corrupt.

(2) Persons who engage in bribery and graft are subject to criminal penalties if they solicit, accept, or agree to accept anything of value in return for performing or re

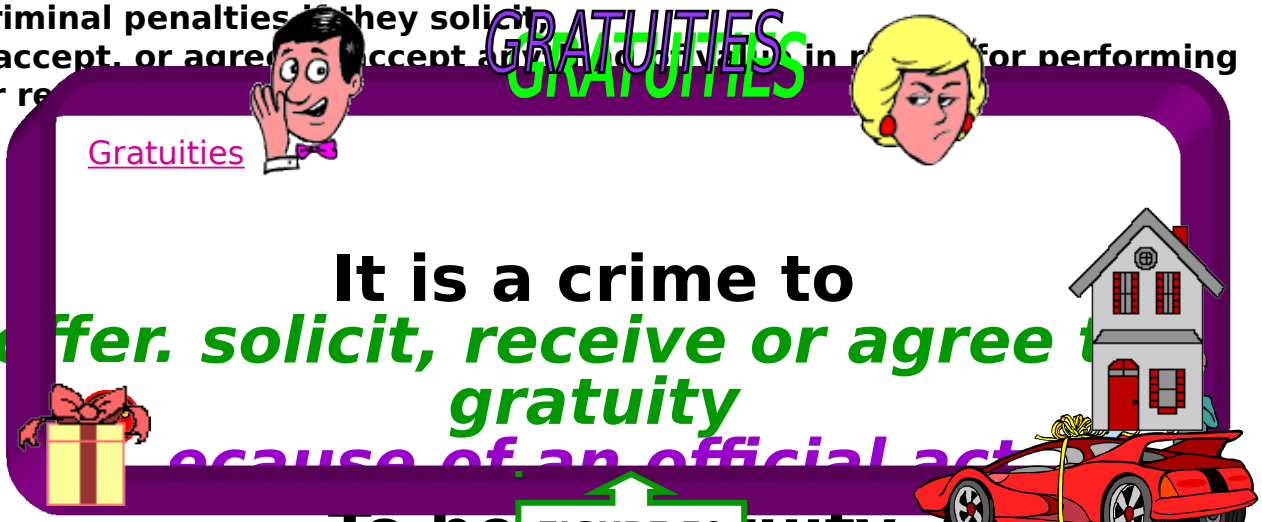


FIGURE 50

(1) It is a crime to offer or give a government official anything of value for or because of

(2) U. S. Government personnel or their families who accept gratuities, no matter how innocently tendered and received, from those who have or seek to have business with the U. S. Government; and those whose business interests are affected by U. S. Government functions may:

(a) Be a source of embarrassment to the U. S. Government;

(b) Affect the objective judgment of the U. S. Government personnel involved; and

(c) Impair public confidence in the integrity of U. S. Government's acquisition system.

8. GENERAL PROHIBITION U. S. GOVERNMENT PERSONNEL and THEIR IMMEDIATE FAMILIES MUST NOT:

a. solicit, accept or agree to accept any gratuity for themselves, members of their families, or others, either directly or indirectly;

b. from, or for any source that is engaged in or seeks to do business or financial relations of any sort with any government agency component; or

c. who conducts any operations or activities that are either regulated by, or are significantly affected by government decisions; or

d. has interests that may be substantially affected by the performance or nonperformance of the official duties of government personnel.

9. OUTSIDE EMPLOYMENT

U. S. Government employees may not engage in outside employment or other outside activities, with or without compensation, that:

a. Interferes with or is not compatible with performing their governme[illegible] an

b.

10.

Or **proc** **subc** **and** **supp** **im** **not** **disc**

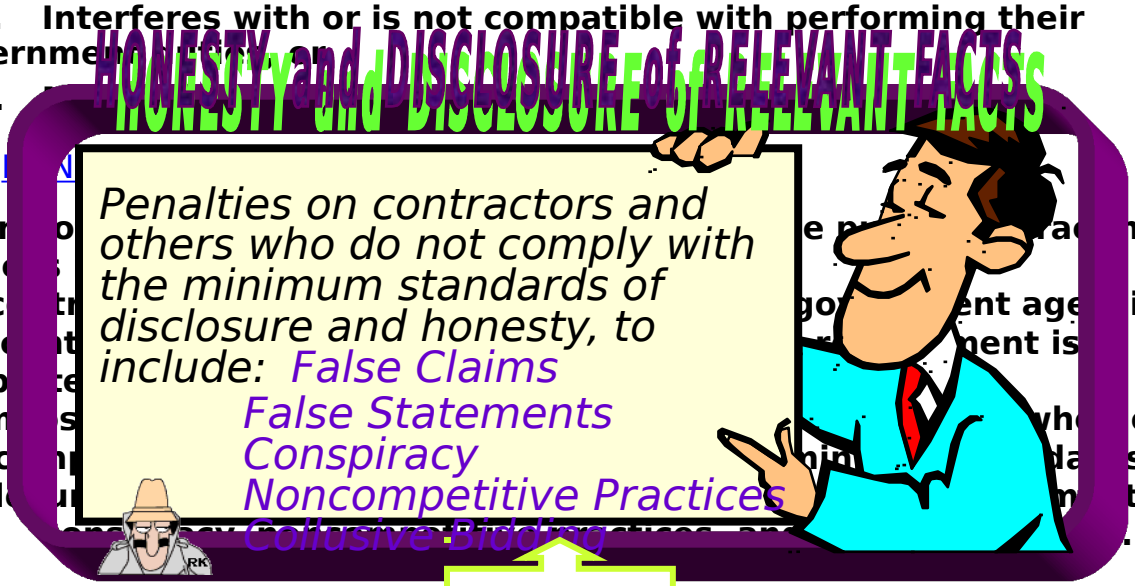

HONESTY and DISCLOSURE of RELEVANT FACTS
Penalties on contractors and others who do not comply with the minimum standards of disclosure and honesty, to include: False Claims
False Statements
Conspiracy
Noncompetitive Practices
Collusive Bidding

FIGURE 51

11. EXECUTIVE ORDER 11222 **(Excerpted and summarized)**

a.

Employees should avoid any actions which might result in, or create the appearance of:

(1) Using public office for private gain;

(2) Giving preferential treatment to any organization or person;

(3) Impeding government efficiency or economy;

(4) Losing complete independence or impartiality of action;

(5) Making a government decision outside official channels;

sely affecting the public confidence in the integrity of th rnment.

b.

(1) Employees may not have direct or indirect financial interests that conflict substantially, or appear to conflict substantially, with their responsibilities and duties as government employees, or engage in, direct ctly, financial transactions as a result of, or relying upon, information obtained through their empl

(2) Aside from these restrictions, employees are free to engage in lawful financial transactions to the same extent as private citizens.

c.

An employee shall not directly or indirectly make use of, or permit others to make use of, for the purpose of furthering a private interest, official information not made available to the general public.

FIGURE 52

12. THE BOTTOM LINE

As a participant in the acquisition process, you must constantly keep yourself "on guard" to improper actions or those that can be construed as such. Understand, beware, and act within the guidelines provided.

14. SUMMARY

Students may seek additional information and clarification of ethics and related statutes from the

CODE OF ETHICS FOR GOVERNMENT SERVICE

Public Law 96-303

Any person in United States U. S. Government service should:

a. Put loyalty to the United States U. S. Government to the highest moral principles and above loyalty to persons, party or U. S. Government Department.

b. Uphold the Constitution, laws, and regulations of the United States and of all governments therein and never be a party to their evasion.

c. Give a full day's labor for a full days pay and give earnest effort and best thought to the performance of duties.

d. Seek to find and employ more efficient and economical ways of getting tasks accomplished.

e. Never discriminate unfairly by dispensing special favors or privileges to anyone whether for remuneration or not, and never accept, for yourself, or for family members, favors and benefits under circumstances which might be construed by reasonable persons as influencing the performance of government duties.

f. Make no private promises of any kind binding upon the duties of office, since a U. S. Government employee has no private word which can be binding on public duty.

g. Never engage in any business with the U. S. Government, either directly or indirectly, which is inconsistent with the conscientious performance of government duties.

h. Never use any information gained confidentially in the performance of government duties as a means for

FIGURE 53

Chapter 7 Section D

DIAMOND or ZIRCON?

PRODUCT SUBSTITUTION/FRAUD

LEARNING OBJECTIVES

1. Upon completion of this chapter, students must be able define product substitution, and know the effects on rights and contractual obligations. They must also be able to identify product substitution indicators, and differentiate between product substitution as compared to authorized substitutions or unauthorized substitutions. Students will apply some of the learning concepts of this chapter in classroom exercises, and in the examination at the end of this course.

2. INTRODUCTION

Product substitution is a serious problem of which we all need to be aware. Becoming aware of the problem is the first step in solving and preventing product substitution. CORs, QARs, and/or inspectors need to identify suspected occurrences of product

Cor

ma

pr

3. EFINITION

FIGURE 54

a. Definition: ***Product substitution occurs when a contractor provides or attempts to provide nonconforming goods or services while billing for conforming goods***

b. Product substitution should not be confused with authorized or unauthorized (erroneous) substitutions i.e.:

(1) when a contractor requests that the U. S. Government permit a substitution of a similar item or service to that specified;

(2) "Brand Name or Equal" descriptions (see Part IV Other Special Interest Acquisition Subjects.) are used in defining the U. S. Government's requirement;

(3) in construction, when brand names are used merely to establish levels of quality required, and are not construed to limit competition;

(4) or even when a contractor *erroneously* substitutes without seeking the contracting officer's approval, unless it can be proven the contractor did so with the "intent" to defraud the U. S. Government" (see fraud definitions below.).

4. COMMON LAW FRAUD

a. False representation (actual or implied) of a material fact;

b. Knowledge by the perpetrator that the information is false;

c. Intent by the perpetrator to deceive;

d. Injury or damage to the victim.

5. FRAUD AGAINST THE GOVERNMENT INCLUDES:

a. Any *willful* or *conscious* wrong doing, that *adversely* affects the U. S. Government;

b. *Criminal,* wrongful obtaining of money or benefits from U. S. Government programs;

The U. S. Government does not have to show reliance by victim to obtain civil or criminal fraud.

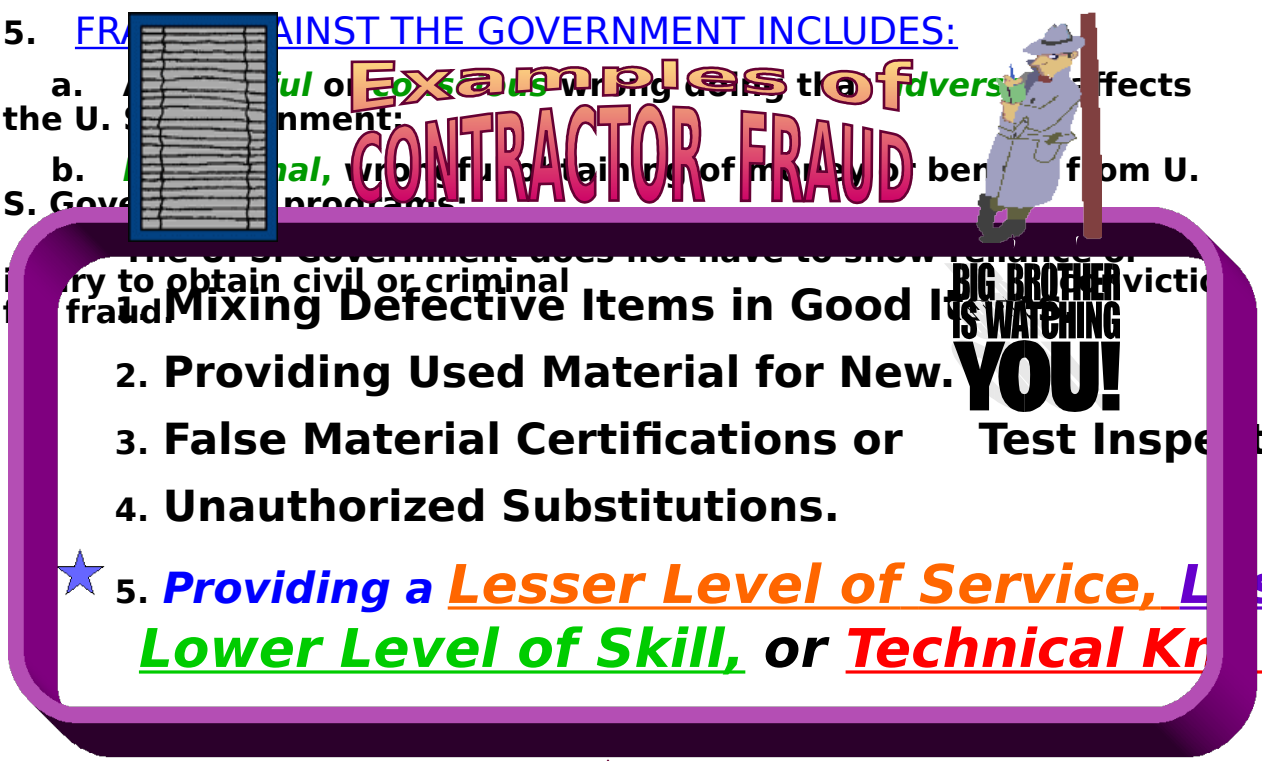

Examples of
CONTRACTOR FRAUD
1. Mixing Defective Items in Good Items
2. Providing Used Material for New.
3. False Material Certifications or Test Inspection
4. Unauthorized Substitutions.
5. Providing a Lesser Level of Service, Less Lower Level of Skill, or Technical Knowle
BIG BROTHER IS WATCHING YOU!

FIGURE 55

6. RESULTS OF PRODUCT SUBSTITUTION):

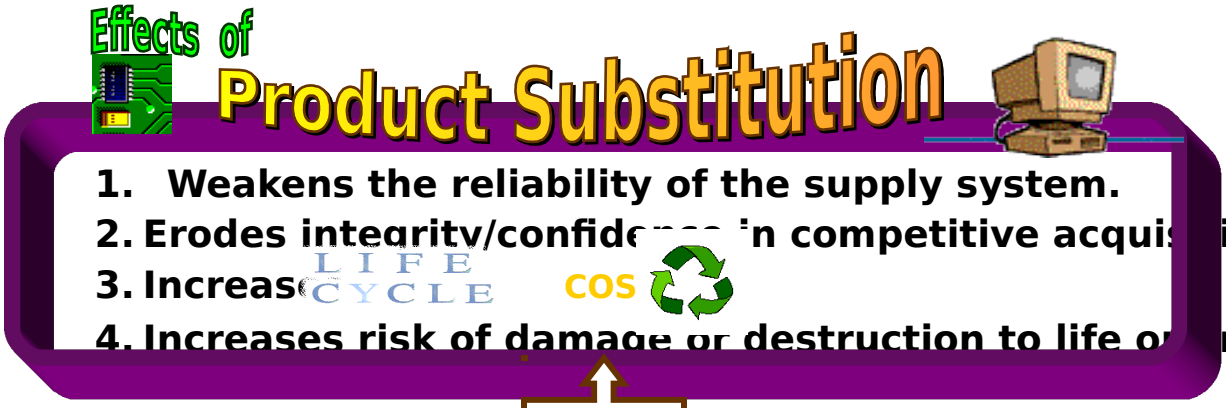

Effects of
Product Substitution
1. Weakens the reliability of the supply system.
2. Erodes integrity/confide n competitive acqui ion sy
3. Increas LIFE CYCLE COS
4. Increases risk of damage or destruction to life o roper

FIGURE 56

a. First, the U. S. Government does not receive that for which it is paying.

b. The mission can be seriously affected. Mission degradation or even failure could result.

c. In some instances contractors contend that even though they did not provide *"exactly"* what was specified, what they did provide was "just as good," and therefore, no harm was done. This argument does not hold up under scrutiny. Generally, when product substitutions have been made, they are at a significant savings to the contractor and are of inferior quality to what was required. The primary reason why contractors substitute is to decrease their costs and increase their profit, or reduce their losses.

d. When introduced into the supply system, nonconforming items could adversely affect the reliability of the supply system.

e. Product substitution also harms the integrity of the competitive process. The basic premise is that all bidders/offerors/contractors compete on an equal footing. Meaning, no one has an unfair advantage over the others. A contractor who resorts to product substitution is in deed, trying to obtain an unfair advantage. If allowed to happen, the competitive acquisition system would be rendered inoperable.

7. PRODUCT SUBSTITUTION INDICATORS:

There are a wide variety of fraudulent schemes that may involve product substitution. Cases have included:

a. The delivery of "look alike" items made from non-approved materials;

b. The delivery of materials that have ***not*** been ***tested*** as required by the contract;

c. Falsification of test results;

d. Falsification of descriptive literature used in evaluating acceptability;

e. Falsified disposal site approvals on environmental waste

8. CORs' ROLE

The CORs/QARs/inspectors role is to be alert to the possibility of product substitution, and identify questionable activities or indicators. CORs/QARs/inspectors are not investigators and should not take it upon themselves to personally investigate suspected cases. CORs/QARs should determine the facts of the questionable circumstances and occurrences and ad opriate Contracting Officer, zant defense criminal i

9. FRAUD AWARENESS

a. The motives and methods for fraud in the acquisition process are varied. Sometimes fraud is perpetrated to obtain a contract to create the opportunity to later engage in such activities as theft, embezzlement, product substitution, defective performance, cost mischarging, submitting defective invoices, fast pay or progress payment fraud. Sometimes the intent is to gain a contract at a higher price or with better terms, or seek a modification to "get well" or recover from poor performance or low bidding. Remember, the mere existence of these circumstances does not establish fraud. Whether they are fraud or not depends on whether the contractor set out with the intent to defraud the U. S. Government.

b. Occasionally fraud may be committed by or with the help of U. S. Government employees. It should not be overlooked that a U. S. Government employee may be involved in questionable practices, i.e.: accepting bribes or prohibited gratuities; has a financial interest in a contractor; participates in the ownership of outside businesses for the purpose of impacting the procurement; divulges acquisition sensitive U. S. Government information; describes the U. S. Government's require ble to a contractor rather than ibing the minimum needs of the Governm

c. An agency whic ion, continually changes its mind abou may make it possible for a contra rease the contract price. Well c nning should allow the selection of acquisitio accommodate chan um of risk to the U. S. Government and in a manner that is fair to the competitors. U. S. Government employees should be cautious to

10. FRAUD REMEDIES

Criminal remedies are available to *punish* those who commit crimes. Civil, contractual and administrative remedies are available to recover money lost on contractual fraud schemes and to protect the U. S. Government from nonresponsible contractors.

11. SUMMARY

This chapter discussed factors which may indicate the presence of, or enhanced potential for fraud The indicators included are not intended, for each to be taken by itself to establish the existence of fraud. Rather, the presence of any of these indicators, when taken in the context of the particular action being conducted, should cause us to be alert to the possibility of impropriety and take appropriate corrective action to ensure the integrity of the process